

EXHIBIT B

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CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON ENVIRONMENTAL
PROTECTION, RESILIENCY AND
WATERFRONTS

----- X

October 16, 2023

Start: 1:24 p.m.

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HELD AT: COUNCIL CHAMBERS, CITY HALL

B E F O R E: James F. Gennaro, Chairperson

COUNCILMEMBERS:

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Kamillah Hanks
Robert F. Holden
Julie Menin
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Citizen of New York

Zach Winestine
St. Gansevoort

Alex Stein
Citizen of New York

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2 SERGEANT AT ARMS: At this time, please silence
3 your electronics, and if you wish to submit a
4 testimony you may do so at testimony@counsel.nyc.gov.
5 Just a friendly reminder: Please do not approach the
6 dais at any moment. If you need assistance, you may
7 ask one of the Sergeant at Arms. And at this time we
8 are ready to begin, Chair.

9 CHAIRPERSON GENNARO: Sergeant, we're ready to go
10 right? Did he say yes? Oh, yes.

11 [GAVEL]

12 Good afternoon, I am Jim Gennaro, Chair of the
13 Committee on Environmental Protection, Resiliency,
14 and Waterfronts. Today we're here to examine the
15 Department of Environmental Protection's response and
16 management to noise complaints. The Committee will
17 also hear a few pieces of legislation including Intro
18 No. 160, sponsored by Councilmember Holden, in
19 relation to the noise standard for commercial
20 businesses, Intro No. 1194 sponsored by me in
21 relation to citizen noise complaints, and a package
22 of bills sponsored by Councilmember Powers (that
23 should be Majority Leader Powers) in relation to
24 construction noise, noise inspection results, and
25 creating a photo noise violation monitoring device

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3 program for motor vehicles. New York City must
4 balance the vibrancy of being a world class city with
5 the needs of everyday New Yorkers. However, DEP
6 cannot always respond quickly to every noise code
7 violation in the city.

8 To that end-- Sip of tea. To that end, the
9 city's noise code allows New Yorkers to file their
10 own noise complaints against violators of some quote
11 "some" noise code-- noise code provisions. These
12 civilian enforcers must first serve a complaint upon
13 DEP. Then if DEP fails to act within 30 days, the
14 enforcer may file a complaint directly on the alleged
15 violator and the Environmental Control Board in the
16 Office of Administrative Trials and Hearings, known
17 as OATH. Civilian enforcers are awarded a percentage
18 of any penalty assessed from a complaint they pursue,
19 that is if it's upheld, typically between \$110 and
20 then \$660 per complaint staff informs me.

21 Engaged New Yorkers play an important role in
22 enforcement of our city's noise code. However,
23 recent news reports have highlighted a small number
24 of civilian enforcers who filed large numbers of
25 complaints under one particular noise code provision,
often repeatedly against the same businesses to

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2 collect the reward money. The result is local
3 businesses being unfairly burdened by overzealous
4 enforcers who are more motivated by profit than
5 quality of life. There I said it. This hearing will
6 examine DEP's and OATH's roles and enforcing the
7 noise code to balance the needs of all New Yorkers.

8 In addition, we'll hear several bills that will--
9 that make will make civilian enforcement of the noise
10 code less financially lucrative and more objective,
11 make it easier for New Yorkers to request and obtain
12 the results of certain noise inspections, and reduce
13 the overall level of unnecessary noise in the city.
14 These bills include Intro 1194, which I sponsored, or
15 am sponsoring that would cap the compensation
16 civilian enforcers can receive when their complaint
17 prompts proceedings under Subdivision B of Section
18 24-244 of the noise code at \$5 for proceedings
19 brought by DEP, and \$10 for proceedings and
20 enforcement and enforcer brings themselves.

21 This would reduce the financial incentive for--
22 well let me just kind of edit this sentence as I read
23 it. This would reduce the financial incentive for
24 individuals who file multiple harassing complaints
25 against businesses for the purposes of collecting the

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2 reward money and will allow DEP inspectors to focus
3 on legitimate noise complaints and on improving the
4 quality of life for all New Yorkers.

5 We're also here-- we will also hear Intro 160
6 sponsored by Councilmember Holden, who would amend
7 the definition for quote "unreasonable noise" close
8 quote, as applies to commercial establishment, to be
9 sound that exceeds specified prohibited noise levels.
10 Unreasonable noise would include impulsive sound
11 above 15 decibels measured at any point within the
12 property in question, or 15-- or 15 feet or more from
13 the source of the sound on the public right away.

14 I just have a sidebar on that: Twenty years ago
15 when the Mayor did his revamp on the noise code, and
16 it came before this committee, and I was Chair at the
17 time, and it was my understanding that we had put
18 that all to rest, and that there was a big-- this is
19 a little history. There was a big fight at the time
20 about the Bloomberg administration's desire to have
21 an unreasonable noise standard for-- for business
22 establishments, for people having backyard parties,
23 for people doing loud noise in their apartments or
24 whatever. And I and the Council, the-- the Council
25 at the time-- the Committee at the time, thought it

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2 was unfair for businesses to not have an objective
3 standard that they had to meet. Just like one drives
4 a car, and the speed limit is 30, you know, the speed
5 limit is 30.

6 And so, we felt it was important to have an
7 objective standard that that business establishments
8 could be apprised of, and they would have to stay
9 within that standard. That would be measured by a
10 decibel meter. Because if the Bloomberg
11 administration had had its way, and it was an
12 unreasonable noise standard that that applied to
13 business establishments, any business would be--
14 would be subject to a violation for noise for
15 anything, you know, depending upon the individual
16 writing the summons. And so how can a business
17 reasonably prepare? And how can they operate if they
18 have no idea when they're going to be violated? And
19 so it'd be-- you know, served with a violation.

20 So that was when we came up with the-- with the
21 noise meter for establishments. That was going to be
22 their standard. They'd be apprised of what the
23 decimal standard is, and then they would have to meet
24 that, they would know it. They can get an engineer.
25 They can look at it. They can measure it, and then

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2 they'd be in compliance. And if someone caught them
3 being out of compliance, as measured by a noise
4 meter, they would get a violation.

5 And the unreasonable noise standard (this is back
6 20 years ago when we thought we put all this to
7 rest)-- the-- the unreasonable noise standard was
8 still going to apply for things that were not
9 establishments: For someone having a loud back
10 backyard party, someone playing a loud noise in their
11 apartment at, you know, three in the morning. So
12 there was certainly as a road for an unreasonable--
13 for an unreasonable noise standard.

14 And so-- but it seems-- not a lawyer-- but it
15 seems that there is still ambiguity as to what that
16 what we actually did 20 years ago, and I think the
17 Holden bill speaks to that. And so we will hear more
18 about that. But I just thought that history lesson
19 was in order. We fought like anything to get the
20 noise standard, measured by decibel meter, to be
21 fair. There was blood shed over that provision. But
22 we prevailed, and now it seems that, you know,
23 unreasonable noise standard for businesses that-- I
24 understand the difference between noise emanating
25 from the operation of a business, and people pointing

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2 speakers out to say, you know, "Come and shop here,
3 by a necktie here." I think that's a little bit of a
4 different story. But certainly, you know, so the
5 plot thickens, over the last 20 years, to where we
6 are now. And so-- Where was I? Where were we?
7 774? Is that where we are?

8 Okay, well hear a package of bills sponsored by
9 Councilmember Powers that includes-- look at this
10 package. Jeez. Look at this whole thing he's got
11 here. Intro 774, which would require DEP to measure
12 the volume of certain types of construction noise
13 from within dwelling units upon request of the owner,
14 lessor, or occupant; Intro 775 which would mandate
15 that DEP publish the results of their noise
16 inspection online within 24 hours after they had been
17 completed; Intro 776, which would require a DEP and
18 NYPD to give a copy of a noise report pursuant to a
19 311 noise complaint to anyone who requests the report
20 and provides the 311 tracking number within 14 days
21 of the request.

22 And you know-- and I know the Majority Leader is
23 going to speak on these bills in a minute. I just
24 kind of want to set them up. Intro 777, which would
25 require any person engaging in a construction project

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2 to obtain an after-hours variance before removing

3 construction debris, before or after certain hours

4 and on the weekend; and Intro 778-- he's the majority

5 leader so I noticed that all of his bills are in

6 consecutive order; 774, 775-- you've got to be the

7 majority leader to pull that off-- Intro 778, which

8 would establish a noise camera program to detect

9 motor vehicles in violation of the noise code.

10 Vehicles found to be in violation are subject to the

11 civil penalty as prescribed by existing law. The

12 bill would require a DEP to report on noise camera--

13 on the noise camera program annually.

14 Finally, I would like to thank the really

15 terrific committee staff who have done such great

16 work over the years, particularly on this hearing.

17 Committee Council Samara Swanson, and Clara

18 McLaughlin, Policy Analyst Ricky Chawla, and Andrew

19 Boren, and Financial Analyst Andrew Lane Lawless.

20 And finally my great legislative director Navi Corr

21 for all of their hard work. Before I turn it over to

22 members who have bills for statements, I want to

23 recognize that we're joined by Councilmember Holden,

24 whom I made reference to, Councilmember Nurse,

25 Councilmember Menin, Committee-- Uh, Majority Leader

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2 Powers. We have Councilmember Hanks on Zoom. Is
3 that correct? And is Lincoln here? Okay. And
4 Lincoln. And Lincoln Restler, who, when he asks
5 questions will no doubt go over time, but I always
6 indulge him. And I think I got it.

7 And with that. Bob, you're a member of the
8 Committee and-- but if you wouldn't mind, we do have
9 the Majority Leader with us, if you would defer and
10 have me call upon the Majority Leader to speak about
11 his package of bills first. Is that okay, Bob?

12 COUNCILMEMBER HOLDEN: Okay.

13 CHAIRPERSON GENNARO: Okay. Councilmember Holden
14 is being most gracious. And now I recognize the
15 Majority Leader to speak on his good bills.

16 MAJORITY LEADER POWERS: Thank you. Thank you,
17 Chair. Thank you to Councilmember Holden, who I know
18 has a bill that we're hearing here today. I also
19 want to congratulate Lincoln on achieving the Donna
20 and Cher status as one name for people in this world.
21 But I really want to thank the Chair and the staff
22 here for giving me the opportunity to hear these
23 bills today and being great partners on a number of
24 issues that we're working on together around
25 environment and quality of life.

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17

We introduced a package a few months back we call the Stop Spreading The Noise Act. Yes, it's a bad pun, but you're going to have to deal with it, my friends. It's to help to reduce excessive noise across the five boroughs. This is directly from constituent calls that we get every single day, and whether you are in Manhattan or anywhere else in the city, I can tell you without question your neighbors and your constituents are-- are dealing with noisy issues every single day.

We all know New York is a city that never sleeps. But between noisy helicopters, constant construction, and loud cars, I think we all can agree it's time for some quiet. I've introduced these five bills to help tackle some of the most common and frequent issues that we hear in my office. First, Introduction 778 establishes a noise camera program to help us detect noisy vehicles and issue violations to any drivers found to be violating city noise limits. This bill would require annual reporting on the locations of the cameras, the number of violations detected, and-- and any revenue raised by the program. And I want to note that the DEP, as I understand it, is rolling out

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2 a program right now, to evaluate this and to
3 understand how it could work here in the city.

4 We also know that construction is another major
5 source of noise. Intro 774 will allow New Yorkers
6 who live near construction sites to request an
7 inspection of sound levels within their home through
8 DEP, and to cut down on construction-related noise
9 overnight on weekends.

10 Intro 777 would require an after-hours variants
11 for the removal of construction debris, two things
12 that we've gotten calls about in my office.

13 Introductions 775 and 776 will help our 311 noise
14 complaint system to be more transparent and effective
15 by ensuring the results of those noise inspections
16 are published online with 24-- within 24 hours, and
17 made available to anyone with a 311 tracking number.

18 Like a lot of issues of 311, it's a fantastic
19 system, but we often hear New Yorkers complain about
20 what happened to that actual call I made? And we
21 think that on this particular issue, they deserve a
22 right to have the outcome of that call in their hands
23 to admit-- to understand better how that city and
24 that system is working for them.

25

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3 And to be clear noise is not only a nuisance,
4 it's a public health issue. The Department of Health
5 has reported that one in six New Yorkers already
6 experience ringing in their ears or hearing loss, and
7 20% are frequently disturbed by noise at home. Long-
8 term exposure can not only lead to hearing loss, or
9 stress, and sleep disruption, disruption but also
10 high blood pressure and heart disease. It's also--
11 we're obviously coming off a period of time where
12 many New Yorkers are staying at home and working, or
13 working increasingly at home, and we have seen
14 citywide the amount of complaints go up, enforcement
15 go down, or the ability to respond to those perhaps
16 stay even while we try to tackle many more complaints
17 coming in. And certainly for the New Yorkers who are
18 experiencing a new way of life, they deserve an
19 opportunity to have a greater, a greater opportunity
20 for peace and quiet.

21 I am confident this package of legislation will
22 help greatly improve New Yorkers' quality of life. I
23 want again, to thank Chair Gennaro for holding this
24 hearing and the Committee staff for their work. I
25 want to thank my staff for helping to put this
package together. I look forward to hearing the

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2 testimony today moving forward this package
3 legislation to make New York just a little bit of
4 quieter. Thanks so much.

5 CHAIRPERSON GENNARO: Thank you very much Mr.
6 Majority Leader. It's my privilege to recognize my
7 colleague and great member of this committee,
8 Councilman Bob Holden to speak on his bill.

9 COUNCILMEMBER HOLDEN: Thank you Chair Gennaro.
10 And-- And just follow up on Majority Leader Keith
11 Powers's comments: The noise problem in New York
12 City has been forever. We all know this. And
13 particularly if you live in a mixed-use area,
14 commercial along with residential. And so there's
15 got to be a balance there. And so the introduction
16 of my bill, Intro 160, is a big step in addressing a
17 significant problem we face in New York City, of
18 course, the noise. I'm not a big fan of noise and
19 some of my legislation in the past has shown that.
20 And I know many others feel the same way. Noise
21 pollution can really impact our daily lives and our
22 quality of life.

23 With my bill, we're looking to take action to
24 deal with this issue seriously. We're setting clear
25 noise standards that don't leave room for any

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2 compromise. Many times, it's very subjective. You
3 get a police officer. And if you call it into 311,
4 it takes-- it tells you on 311, it'll take eight
5 hours, many times to address it within eight hours.
6 The problem we have, and my district is certainly one
7 of them, we have a problem where the officer goes
8 there and says, "Oh, it's not that noisy." And then
9 the homeowner calls and says, "Listen to this
10 councilman. Look at how noisy this is. I have this
11 for eight hours a day." So we need some kind of
12 standards. So I'm hopeful that these measures will
13 make our city a quieter and more comfortable place to
14 live. Again, particularly in mixed-use areas. So,
15 I'm looking forward to hearing from both the
16 administration and the public on this matter. I'm
17 open to suggestions on the bill. If people feel that
18 it's-- it's too strict, we could-- we could change
19 it. We can modify it.

20 So your feedback and support are crucial. As we
21 work together to create a more peaceful and enjoy--
22 enjoyable urban environment in New York City. I want
23 to thank the Chair again.

24 But I also want to bring up a little history, if
25 you if you don't mind, Chair Gennaro that--

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2 CHAIRPERSON GENNARO: Please, please do so.

3 COUNCILMEMBER HOLDEN: Mayor Bloomberg tried
4 this. Mayor Bloomberg had Operation Silent Night.
5 Does anybody remember operation Silent Night? One
6 person in the room. And where did it go? It went
7 nowhere. Nothing really came of it. It's a noisier
8 city. So, I thank the Chair for this, these series
9 of bills, and the Majority Leader because these are
10 important bills to make-- to improve our quality of
11 life. Again, thank you, Chair.

12 CHAIRPERSON GENNARO: Thank you. And
13 notwithstanding the fact that Silent Night didn't
14 turn out the way a lot of people thought, when the
15 mayor put forward his comprehensive overhaul of the
16 noise code which took-- he put it forward, I think,
17 in 2003. But by the time we got through with all the
18 yelling and screaming, it was like 2005 when we
19 actually got it done. So it was-- you know, it
20 affected the carting industry. It affected building
21 managers that had air circulation devices. It
22 affected construction, carting. It was-- We-- It was
23 a comprehensive package that I thought did a good
24 job. But you know, not everything is-- is a big hit.
25 So Silent Night wasn't a big hit. But to the Mayor's

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2 credit, he really tried to take noise, you know,
3 seriously. We got a lot done, but we're back.

4 And-- and with that, I think we're ready to call
5 the first panel, the Office of Administrative Hearing
6 and Tribunals. I'd ask the Committee Counsel to
7 swear in the witnesses, and I'll just-- as a matter
8 of, you know, just a statement I-- I want to thank
9 DEP for, you know, kind of working with us to
10 structure the hearing this way. Ordinarily this is--
11 When we call The Administration this hearing
12 ordinarily would be-- DEP would be the first entity
13 to testify. But as always, we work well with DEP.
14 We work well with The Administration. And I worked
15 well with OATH before. I was the one that gave you
16 folks the ECB. I don't know if you enjoy that or
17 not, but it used to be in DEP. We took it out of DEP
18 and gave it to you. And I hope that worked out for
19 you. And so, with that said, let me make sure I have
20 my copy of your testimony in front of me. And the
21 witnesses are sworn, right? Or have they been sworn,
22 or just called forward? Have they been sworn yet?

23 COMMITTEE COUNSEL: Would you please raise your
24 right hand? Do you swear or affirm to tell the
25

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2 truth, the whole truth and nothing but the truth
3 today?

4 PANEL: I do.

5 CHAIRPERSON GENNARO: Thank you very much. I
6 have your statement. You may proceed with your
7 testimony.

8 DEPUTY COMMISSIONER CASTELLI: Thank you,
9 Councilmember-- Chair Gennaro. Thank you. Good
10 afternoon Councilmembers. My name is John Castelli,
11 and I am the Deputy Commissioner for Legislative
12 Affairs at the New York City Office of Administrative
13 Trials and Hearings.

14 I would like to start by thanking Chair Gennaro,
15 and the members of the Committee here today, taking
16 the time that-- you're-- I know you have extensive
17 responsibilities and it's appreciated. I'm joined by
18 my colleague, Amy Slifka, who is the Deputy
19 Commissioner of our Hearings Division.

20 By way of background OATH is New York City's
21 central independent administrative law tribunal, and
22 our mission is to ensure that everyone who appears
23 before us receives a fair opportunity to be heard and
24 a timely resolution of their case. We are a high-
25 volume court, and in fiscal 2023 alone in our

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3 hearings division, we processed almost 765,000
4 summonses, and held over 238,000 hearings, and issued
5 close to 2000 appeals decisions. We also closed
6 after trial or by settlement conference approximately
7 4200 cases at our trials division. In each of these
8 cases, we take great care to ensure that every party
9 who appears before us is treated impartially and is
10 accorded due process. In order to fulfill our
11 mission, ensure impartiality, and protect due
12 process, OATH must remain independent from the many
13 city agencies that appear before us.
14 New Yorkers, including individuals, homeowners,
15 and small businesses, need to know that when they
16 come before OATH, they are coming to a place that is
17 unaffiliated with the agency that issued them a
18 summons or notice of violation. And that they will
19 be given a fair hearing. I have had the opportunity
20 to do outreach events in a number of council
21 districts, including some of your own (and if I
22 haven't done it with you yet, believe me, I'm going
23 to be there at some point, and looking forward to
24 it), and through that work, I've come to learn that
25 your constituents rely on OATH being independent.
And for these reasons, we take our independence very

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2 seriously. One way that OATH maintains its
3 independence is by not getting involved in
4 enforcement matters. OATH does not opine on
5 potential enforcement legislation, enforcement
6 policy, or enforcement penalties. Those decisions
7 are for the policymakers. We are the tribunal. Once
8 a law is passed, we apply that law to the facts of
9 each case brought before us. Consistent with this
10 OATH takes no position on the package of proposed
11 legislation that is under consideration at today's
12 hearing. We are here today because we understand
13 that the Committee has questions about OATH,
14 processes and data, and we are happy to assist the
15 Committee and understanding how OATH works. And we
16 will do our best to respond to your questions. Thank
17 you Chair Gennaro.

18 CHAIRPERSON GENNARO: Thank you very much for
19 appearing here today. We appreciate all that OATH
20 does. And, oh, we're also joined by Councilmember
21 Gutiérrez. She has joined us, and we are grateful to
22 have her.

23 And-- And you came out to my district recently,
24 and we have to-- we have to coordinate that.

25

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2 DEPUTY COMMISSIONER CASTELLI: Yes, Chair. We
3 had a tremendously successful event out in your Kew
4 Gardens branch--

5 CHAIRPERSON GENNARO: Right.

6 DEPUTY COMMISSIONER CASTELLI: --library and
7 we're looking forward to coming out again.

8 DEPUTY COMMISSIONER CASTELLI: Yeah, there was a
9 little disconnect with my office. But, yeah-- but we
10 certainly appreciate you know, getting out to--
11 getting out to Queens, particularly my district.

12 Okay, I have some prepared questions, but I--
13 just help me out here a little bit. So, on August
14 17, there was a resolution put forward by OATH
15 regarding the exercise of authority to remit a civil
16 penalty in code Section 24-244 B matters. This has
17 become a big deal. And-- And so if you could just--
18 For those that are not familiar-- Because this is
19 seems like kind of an extraordinary thing for--
20 Because-- For OATH to put forward because it wasn't
21 in relation to one specific appeal or whatever. It
22 was just OATH putting this out. And-- And if you
23 could just walk us through the reason why OATH felt
24 compelled to-- to put out this resolution. This is a
25 real resolution with whereas clauses and a resolved

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2 clause and all the trimmings, you know. You know,
3 what compelled OATH to do that, and for the laypeople
4 here what are you trying to get across to folks?

5 DEPUTY COMMISSIONER CASTELLI: Mr. Chair, the
6 decisions made by the Environmental Control Board are
7 something I can't comment too as a representative of
8 the administrative law tribunal. It those decisions
9 are-- they speak for themselves, just like the
10 decisions that are made by a-- quasi-judicial
11 decisions that are made by our hearing officers and
12 our ALJs. So I can't speak to--

13 CHAIRPERSON GENNARO: Okay.

14 DEPUTY COMMISSIONER CASTELLI: --that decision.

15 CHAIRPERSON GENNARO: All right. I am officially
16 oh-for-one now. Let's see if I can get my batting
17 average up. Lincoln's-- one of his jobs is to
18 chuckle at things that I say, nothing else.

19 You're supposed to do it all the time.

20 Okay, thank you.

21 Now, in light of what you said, let me ask
22 questions that would be appropriate for OATH,
23 according to how you just couched that.

24

25

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29

This could be-- I just want to get this on the
record. You probably have to get back to me with
this: What is the total monetary value of the civil
penalties that OATH has sustained for citizen-
initiated summonses alleging a violation of Section
24-244 B?

DEPUTY COMMISSIONER CASTELLI: That I'd have to
get back to you on now.

CHAIRPERSON GENNARO: So I-- Again, this is--
this is the things that we want, and we appreciate
that.

And what percentage of-- This-- You may have
some sense of this, you may not, or you may-- may
want to get back with a reassessment. What
percentage of citizen-initiated summonses alleging a
violation of Section 24-244 B have been defaulted on?

DEPUTY COMMISSIONER CASTELLI: The percentage is
59%.

CHAIRPERSON GENNARO: So 59% default? Okay. All
right. Now the citizens-- citizen enforcers have
been using Section 24-244 B to-- which I believe is
really meant for those that have speakers facing out
from an establishment trying to generate business.
And-- And are you in a position to tell us whether or

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2 not that-- that section of the code is being applied
3 correctly when it comes to businesses that are-- not
4 have outward facing speakers, but they have ambient
5 noise within the establishment that spills out into
6 the street? That is my undrestanding. It was
7 supposed to be like a decibel noise measure standard,
8 and not subject to the unreasonable noise standard.

9 DEPUTY COMMISSIONER CASTELLI: Mr. Chair, we
10 wouldn't be able to comment on whether or not the
11 enforcement-- This is more of an enforcement type
12 question. We can comment on the processes where we
13 have a citizen-prosecuted summons filed with OATH,
14 and we can tell you what happens once that summons is
15 filed. And I do want to stress that I have
16 tremendous respect for this Committee and the
17 council, and I don't like to tell you, "Hey, I can't
18 answer."

19 CHAIRPERSON GENNARO: No, no. It's fine.

20 DEPUTY COMMISSIONER CASTELLI: So I just want you
21 to be aware of that.

22 CHAIRPERSON GENNARO: John, don't worry about it.
23 We're-- We feel you. We got it, you know? And-- But
24 I will for the sake of the public, you know,
25 indicate, just-- just to put on the record, that

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2 this, you know, August 17-- this August 17 resolution
3 talks a lot about 24-244 B, and what it really gets
4 at is that-- I'll just read it.

5 Resolved that the board exercises-- meaning the
6 Environmental Control Board-- exercises the authority
7 granted under 24-25 Section B-- which is-- that's the
8 whole-- it's the enforcing thing. To remit in whole
9 the civil penalty in all matters, wherein summonses,
10 charges, a violation of 24-244 B, upon finding at the
11 hearing that the respondent is no longer in violation
12 accordingly upon a hearing officer, so finding a zero
13 penalty shall be imposed.

14 And I just want to let that sink in a little bit.

15 So this is from the Board, saying that if someone
16 brings something forward, under 24-244 B, if the
17 respondent is no longer in violation, and that can be
18 substantiated, a zero penalty shall be imposed. It
19 seems to me-- this is my own editorializing-- I'll
20 own it-- that OATH has kind of had it with these
21 violations, and they are-- this is their own way-- my
22 interpretation, you know-- that this is their way of,
23 like, putting forward that the-- what's been going on
24 since this fairly recent phenomenon of the, you know,
25 citizen enforcers going out and-- and using 24-244 B,

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2 you know, in a way that differs from what it was
3 intended. You know, to me, this is OATH doing, kind
4 of, all it can to indicate that, as long as the, you
5 know, condition is now corrected, no penalty will be
6 imposed.

7 And so I know that OATH is kind of in a little
8 box here, and-- and has limited ability to opine on
9 this and that. But, you know, to me, this was a
10 striking resolution. I think, kind of an act of
11 courage on the on the part of OATH, and I salute you
12 for that. That's not a question. It's a statement.

13 And-- But getting back to that 59% number. So,
14 someone gets a violation under 24-244 B, and maybe
15 the section-- maybe that maybe that section of the
16 code is being applied in the right way, maybe it is
17 being applied in the in the wrong way, but if they
18 default, they lose, judgment against them, they have
19 to pay the-- the citizen enforcers, you know, get
20 their bounty or whatever you want to call it. And
21 then the businesses have to pay. So this a 59%
22 default rate. And, so that I think is-- are there--
23 Just to turn this into a question. I mean, is it--
24 is it ordinary for a lot of different violations for
25 there to be like this level of default? Or is 24-244

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2 B, you know, unique in its, you know, percentage of
3 defaults?

4 DEPUTY COMMISSIONER CASTELLI: I couldn't answer
5 that question. Regarding--

6 CHAIRPERSON GENNARO: It was a good question,
7 though, I think.

8 DEPUTY COMMISSIONER CASTELLI: That says, I mean,
9 as the administrative law tribunal our-- our role is
10 to ensure that the hearings happen, I can't speak to,
11 or can't--

12 CHAIRPERSON GENNARO: Okay.

13 DEPUTY COMMISSIONER CASTELLI: --can't opine on
14 why someone defaults, fails to answer a summons. And
15 I can't...

16 CHAIRPERSON GENNARO: Well, I tell you what. Why
17 don't we have someone from OATH, if you wouldn't
18 mind, you know, put some numbers together on default
19 rates if that's-- obviously it's-- it's public
20 information. I'm just I just want to kind of zero in
21 on that 59% default number.

22 DEPUTY COMMISSIONER CASTELLI: So I can-- I can
23 look into that and we'll get back to you.

24 CHAIRPERSON GENNARO: Okay. Sure.

25

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2 And-- And regarding the OATH appeals unit, if
3 you-- if you're able, can you describe the role of
4 the OATH appeals unit? And are the decisions of the
5 appeals unit binding on all hearing officers?

6 DEPUTY COMMISSIONER CASTELLI: The decisions by
7 the-- depending on-- obviously, there could be
8 factual distinctions between cases, but where the
9 where the facts are basically the same, a decision is
10 made when it's-- those-- those facts are applied to
11 the law in question. If the appeals decision is made
12 based on those facts, and there are similar cases
13 those--

14 CHAIRPERSON GENNARO: Right.

15 DEPUTY COMMISSIONER CASTELLI: --those similar
16 cases could follow that-- that decision. Again-- But
17 it each case is taken on its own.

18 CHAIRPERSON GENNARO: Right.

19 DEPUTY COMMISSIONER CASTELLI: so it-- there are
20 so many nuances involved, as you know.

21 CHAIRPERSON GENNARO: Yeah.

22 DEPUTY COMMISSIONER CASTELLI: So regarding this:
23 Yes, and my answer is: It depends, basically.

24 CHAIRPERSON GENNARO: Right. But-- So the-- When
25 something is appealed, and, you know, you-- and-- and

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2 RESILIENCY AND WATERFRONTS
3 the appeals unit comes forward with the decision that
4 is-- that is-- that's what lawyers might call
5 precedent or something. Is that-- Is that a proper
6 use of that term, Counsel? And, but it is-- so it--
7 so these appeals would be disseminated to the hearing
8 officers, and they'd be aware of various appeals,
9 that when they're in the midst of adjudicating, you
10 know, whatever, they're adjudicating, they would-- it
11 would be, it would be fair to say that that would be
12 guidance for them, right?
13 DEPUTY COMMISSIONER CASTELLI: Pursuant--
14 Pursuant to the charter requirement, yes.
15 CHAIRPERSON GENNARO: Right. Okay.
16 And has OATH-- has OATH seen an increase in
17 citizen-initiated summonses under 24-261 alleging a
18 violation of Section 24-244 B in the last year? Do
19 you have any sense of that?
20 DEPUTY COMMISSIONER CASTELLI: I can't. I
21 couldn't tell you. I'd have to get back to you on
22 that.
23 CHAIRPERSON GENNARO: All right.
24 There's so many questions here. I want to be--
25 And ordinarily when-- I normally bring in my other
members fairly early to ask questions, because I like

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2 RESILIENCY AND WATERFRONTS
3 to get them involved and engage them. I'm being a
4 little bit of a ball hog here, and it's not my way to
5 do this. But this is kind of a special case.
6 Pardon me while I shuffle through papers.
7 While I kind of get my head together for my next
8 question, we have Councilmember Nurse who has asked
9 for the opportunity to ask questions. I recognize
10 Councilmember Nurse.
11 COUNCILMEMBER NURSE: Chair, I think my question
12 is going to be for DEP.
13 CHAIRPERSON GENNARO: Oh, no. These would just
14 be for OATH. Okay. And so...
15 COUNCILMEMBER NURSE: Actually, mine will be for
16 later.
17 CHAIRPERSON GENNARO: What's that?
18 COUNCILMEMBER NURSE: I have a question for
19 later.
20 CHAIRPERSON GENNARO: Okay, fine. Sure.
21 CONSERVATIVE MEASURES NURSE: Thank you. Thank
22 you.
23 CHAIRPERSON GENNARO: Yeah. So yeah, when-- when
24 DEP is on what, we'll do that.
25 Okay. I recognize Councilmember Holden for
questions.

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2 COUNCILMEMBER HOLDEN: Thank you, Chair. Just a
3 few questions on the types of complaints and some of
4 the defense that we hear from, let's say some
5 establishments. I'm more interested in hearing from
6 commercial establishments, like-- do some of these
7 commercial establishments say-- or do most of their
8 defense would say, "I didn't know about the law," or
9 "I didn't know the standards of the law."

10 DEPUTY COMMISSIONER CASTELLI: I mean, in that
11 scenario, the answer would be yes.

12 COUNCILMEMBER HOLDEN: That would be the majority
13 of the time--

14 DEPUTY COMMISSIONER CASTELLI: I couldn't tell
15 you--

16 COUNCILMEMBER HOLDEN: --they didn't know they
17 were violating-- violating the law?

18 DEPUTY COMMISSIONER CASTELLI: I can't--

19 COUNCILMEMBER HOLDEN: It was essentially noise
20 complaints. I would-- I would think that would be
21 probably the defense.

22 DEPUTY COMMISSIONER CASTELLI: That could be a
23 defense, yeah.

24

25

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2 COUNCILMEMBER HOLDEN: And-- And so when you say
3 that there was a default, that means they didn't
4 answer the complaint?

5 DEPUTY COMMISSIONER CASTELLI: They failed to
6 answer the summons.

7 COUNCILMEMBER HOLDEN: They failed--

8 DEPUTY COMMISSIONER CASTELLI: Which means-- Yes,
9 I'm sorry, Councilmember.

10 COUNCILMEMBER HOLDEN: And then-- So tell us what
11 happens.

12 DEPUTY COMMISSIONER CASTELLI: So if they fail to
13 answer a summons, what happens is OATH will notify
14 the respondent, business establishment, and let them--
15 - immediately notify them and let them know that
16 you're-- you've missed your hearing, please contact
17 us ASAP regarding this. And they get 75 days from
18 the date of the hearing that they missed where they
19 can file a motion to vacate that default. So that's
20 75 days without any questions asked they will be
21 given. Once they file their motion to vacate (you
22 can do it online, you can do it in writing), they
23 will be granted a new hearing date.

24 COUNCILMEMBER HOLDEN: So you give them--
25 automatically give them a second chance?

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2 DEPUTY COMMISSIONER CASTELLI: A second chance.

3 Yes. Yes.

4 COUNCILMEMBER HOLDEN: Then what happens after
5 that if they don't?

6 DEPUTY COMMISSIONER CASTELLI: Well, if they
7 don't, then from between-- if it's more than 75 days
8 and less than one year, they need a reasonable excuse
9 to-- for-- to get a motion to vacate that default.
10 They have to provide a reasonable excuse. And if
11 it's more than a year, they are going to need a-- an
12 extra-- extraordinary circumstance to succeed in
13 getting that motion to vacate.

14 COUNCILMEMBER HOLDEN: All right. At what point--
15 - what point do you generate a summons?

16 DEPUTY COMMISSIONER CASTELLI: Well, we don't
17 generate the summons--

18 COUNCILMEMBER HOLDEN: You don't generate, but
19 the agency will.

20 DEPUTY COMMISSIONER CASTELLI: The summons-- The
21 summons is filed with us by the enforcement agency.
22 That's when it comes into our universe. That's when
23 it exists in our world.

24 COUNCILMEMBER HOLDEN: Right.

25

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2 RESILIENCY AND WATERFRONTS
3
4 DEPUTY COMMISSIONER CASTELLI: So it depends when
5 the agencies file it with us.
6
7 COUNCILMEMBER HOLDEN: So it's up to them if they
8 file it.
9
10 DEPUTY COMMISSIONER CASTELLI: Yes. And they set
11 the hearing dates.
12
13 COUNCILMEMBER HOLDEN: All right. Thank you,
14 Chair.
15
16 CHAIRPERSON GENNARO: Thank you. Thank you,
17 Councilmember Holden.
18
19 Now, most times, the entities that bring
20 summonses forward to OATH would be agencies, yeah?
21 You know?
22
23 DEPUTY COMMISSIONER CASTELLI: Yes.
24
25 CHAIRPERSON GENNARO: And are there any special
accommodations or changes to OATH-- to OATH's
practices that must be made for citizen-initiated
summonses, as opposed to when the petitioner is an
agency? How does that-- how does that work?
DEPUTY COMMISSIONER CASTELLI: Well, when--
Obviously when-- when the agency files a summons with
OATH, then the-- it comes into-- again, as I said,
we-- then the adjudicatory process begins. And then
there is a hearing. And until we get to that

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2 hearing, there are no ex parte communications between

3 OATH and any of the parties. The only time we have

4 any communications is on the record at the hearing.

5 Now, when a-- when a citizen-prosecuted summons

6 is filed with OATH, then it's treated-- the hearing

7 date is set similarly to the-- similarly to the what

8 the-- the enforcement agency sets the hearing date,

9 and also the-- the citizen complainant, the citizen

10 prosecutor who-- who becomes-- who prosecutes the

11 case. They have to appear at the hearing. Now,

12 sometimes the enforcement agency is not-- does not

13 appear-- they don't always appear at the hearing.

14 They usually do. But in the case of the citizen--

15 CHAIRPERSON GENNARO: Okay. If you could just--

16 just hold on that point again. So-- So you've got a

17 citizen-initiated adjudication that's going on.

18 DEPUTY COMMISSIONER CASTELLI: Rirhgt.

19 CHAIRPERSON GENNARO: So the entities that would

20 be there would be the adjudicatory entity, which is

21 you folks.

22 DEPUTY COMMISSIONER CASTELLI: Yes.

23 CHAIRPERSON GENNARO: And then you have the

24 person making the complaint?

25 DEPUTY COMMISSIONER CASTELLI: Yes.

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2 CHAIRPERSON GENNARO: And the person that the
3 complaint is being made against?

4 DEPUTY COMMISSIONER CASTELLI: Yes.

5 CHAIRPERSON GENNARO: And then you would have the
6 agency that's involved?

7 DEPUTY COMMISSIONER CASTELLI: No. No. What I'm
8 talking about is where the-- where it's a citizen-
9 prosecuted summons, where-- that's filed with OATH,
10 it's the citizen complainant who has to appear at the
11 hearing to prosecute the case against the responding-
12 - the respondent-- before the OATH hearing officer.

13 CHAIRPERSON GENNARO: Right. And let's just say
14 this citizen enforcer was-- makes an allegation of a
15 violation, and OATH makes a determination that the
16 section of the code cited by the complainant is not
17 the right section of the code, or that section of the
18 code doesn't apply to the complaint that they're
19 bringing forward. What happens then?

20 DEPUTY COMMISSIONER CASTELLI: I'm going to defer
21 to Deputy Commissioner Amy Slifka, who is the head of
22 our Hearings Division.

23 CHAIRPERSON GENNARO: All right.

24 DEPUTY COMMISSIONER CASTELLI: She can give a
25 better answer than me.

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2 DEPUTY COMMISSIONER SLIFKA: So basically, from
3 one--

4 CHAIRPERSON GENNARO: Please state your name for
5 the record.

6 DEPUTY COMMISSIONER SLIFKA: I'm sorry. Amy
7 Slifka, Deputy Commissioner of Adjudications at OATH.

8 So basically, from what I'm hearing, you're
9 saying is: If a summons is issued, and for example,
10 they don't-- the facts don't make out the charge for
11 the section of law, if both parties are present, then
12 the hearing officer would hear the case, the
13 petitioner would present their case, in this case the
14 citizen complainant, the respondent would present
15 their case, and the hearing officer would decide the--
16 - make the decision on the case. If the facts don't
17 make out a case for the section of law charged, then
18 obviously, it's not making a prima facie case, and it
19 would more than likely be dismissed. But this is not
20 done ex parte. This is not done by the hearing
21 officer without both sides being given an opportunity
22 to present their side of the case.

23 CHAIRPERSON GENNARO: Right. But the-- But the--
24 Any individual who will be-- who would be doing the--
25 who would actually be doing the-- doing the

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2 RESILIENCY AND WATERFRONTS
3 adjudication would be a hearing officer and-- and ALJ
4 or...?
5 DEPUTY COMMISSIONER SLIFKA: Right. It's a
6 judicial hearing officer. Right.
7 CHAIRPERSON GENNARO: And so that person is-- is
8 obliged to make sure that the code is--
9 DEPUTY COMMISSIONER SLIFKA: Applied correctly.
10 CHAIRPERSON GENNARO: --that section is being is
11 being applied correctly?
12 DEPUTY COMMISSIONER SLIFKA: Correct.
13 CHAIRPERSON GENNARO: Okay, and that-- and that's
14 that, right?
15 DEPUTY COMMISSIONER SLIFKA: And that's that.
16 CHAIRPERSON GENNARO: Okay. All right.
17 Okay. I recognize Councilmember Nurse who has a
18 question for OATH.
19 COUNCILMEMBER NURSE: Just one question. I'm
20 just trying to understand what-- what data you can
21 share. I had a question about how many of the
22 complaints that have been initiated by the two
23 people, who I'm reading, make about 90% of the noise
24 complaints, how many of those are successful?
25 DEPUTY COMMISSIONER CASTELLI: Thank you,
Councilmember for the question. First thing I just

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2 want to clarify for-- so I answer the best I can to
3 your question is: When we at OATH-- We look at
4 Citizen-prosecuted summonses and not they're not
5 citizen complaints. So they're filed with us, the
6 citizen-prosecuted summonses. That's when-- uh, so
7 in terms of--

8 COUNCILMEMBER NURSE: So of those that are-- of
9 those that are filed with you...?

10 DEPUTY COMMISSIONER CASTELLI: I-- I couldn't
11 tell you what the-- what the what the numbers are. I
12 cannot tell you. I can check to see if we can find
13 out.

14 COUNCILMEMBER NURSE: What kind of data are you
15 able to provide today, I mean, related to this
16 hearing? I'm just kind of struggling to understand
17 what we're what we're getting here.

18 DEPUTY COMMISSIONER CASTELLI: Sorry?

19 COUNCILMEMBER NURSE: I'm asking what kind of
20 data are you able to provide today around this
21 hearing topic?

22 DEPUTY COMMISSIONER CASTELLI: Well, the data
23 that I provided-- that was provided from the
24 questions--

25

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2 COUNCILMEMBER NURSE: The 59%? That's really--
3 That's the only data point I heard, but I might-- I
4 might have mis-- misheard.

5 DEPUTY COMMISSIONER CASTELLI: No, I can't-- I
6 mean, the questions that were previously provided to
7 us, we had given information regarding the summonses
8 that were issued by the enforcement agency, DEP, and
9 by the citizen-prosecuted, citizen complainants who
10 prosecute summonses with us.

11 COUNCILMEMBER NURSE: Okay. So even if you've
12 said it or not, just to restate it, because I'm
13 trying to keep on top of what's being said across
14 here.

15 DEPUTY COMMISSIONER CASTELLI: And Councilmember,
16 please, it's-- We want to make sure we--

17 COUNCILMEMBER NURSE: Yeah. I know. I'm trying
18 to understand the scale of it.

19 DEPUTY COMMISSIONER CASTELLI: we explain. As
20 the administrative law tribunal, it's-- it's our job
21 to make sure that you know-- the more you know, the
22 better it is for your constituents, the better is for
23 all of us, and we can make sure that people get fair
24 and impartial hearings.

25

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47

COUNCILMEMBER NURSE: I believe you. I believe
you 100%.

DEPUTY COMMISSIONER CASTELLI: I sound like a
broken record when I say it, because that's all I
say, and people get annoyed because all they hear
about from-- from us is "fair and impartial hearings"
and "due process", because that's what we focus on.

COUNCILMEMBER NURSE: It's just been hard for me
to follow exactly the numbers in this conversation.
So, I'm trying to get a sense of-- how many cases
that are complaints, that move into your jurisdiction
where you are taking action around noise complaints,
have been successful?

DEPUTY COMMISSIONER CASTELLI: Well, the-- If
look--

COUNCILMEMBER NURSE: How many of those cases are
you getting a year? Because you testified a lot of
numbers, just in terms of all of the cases, but I
don't know if that was...

DEPUTY COMMISSIONER CASTELLI: If-- If I'm if I'm
correctly interpreting the question, and forgive me
If I'm not, please, we have-- the numbers that were
provided have the cases that are dismissed and the
percentage. If you look at citizen-issued summonses

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2 by percentage for noise, you will see the percentage
3 of summonses that are dismissed. That would be on
4 page three, if we have the same type of--

5 COUNCILMEMBER NURSE: I think maybe mine has a
6 missing page. I have a paragraph where you have, you
7 know, 765,000 summonses, 2000 appeals. I just don't
8 if that's-- just that's like your whole casework.

9 DEPUTY COMMISSIONER CASTELLI: Right. We
10 provided numbers and have numbers.

11 COUNCILMEMBER NURSE: Okay.

12 DEPUTY COMMISSIONER CASTELLI: We provided the
13 answers to questions that counsel-- that the
14 committee has submitted to us.

15 COUNCILMEMBER NURSE: I will follow up and get
16 those then, because this was not-- I was like, I'm
17 not 100%.

18 DEPUTY COMMISSIONER CASTELLI: Yeah. Please feel
19 free. We're always available. You can-- Feel free.
20 I'm able to give you our-- I'll give you my card
21 after that-- when we're done here so you have access,
22 and please contact us any time.

23 COUNCILMEMBER NURSE: Okay, that sounds great.
24 Thank you, Chair.

25 DEPUTY COMMISSIONER CASTELLI: Thank you.

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2 CHAIRPERSON GENNARO: Thank you, Councilmember
3 Nurse. Here's just one, a sort of final question.
4 Getting back to the resolution. I'm kind of still
5 stuck on that. And Counsel of the Committee thinks
6 it's good idea to get this question in full on the
7 record. Again, going back to the resolution. On
8 August 17th, the ECB adopted a resolution to exercise
9 the authority-- to exercise the authority-- the noise
10 code grants them, ECB, to remit a civil penalty upon
11 a finding and a hearing that the respondent is no
12 longer in violation of Section 24-244 B, which
13 concerns the use of a noise reproduction device by a
14 commercial enterprise for advertising purposes. What
15 factors will the ECB rely on to make a determination
16 and each matter that there is no longer a violation?

17 DEPUTY COMMISSIONER CASTELLI: Again, Chair, I
18 can't speak to-- I cannot opine on the decision, a
19 quasi-judicial decision that the Board made.

20 CHAIRPERSON GENNARO: Okay. But I think the
21 resolution, you know, does kind of speak for itself
22 somewhat on that. And does anybody have any more
23 questions for-- for OATH? No? Okay.

24
25

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50

With that, I would like to thank you both for
coming before us. Do you have another statement you
want to make?

DEPUTY COMMISSIONER CASTELLI: I just want to
thank you, Chair Gennaro. OATH wouldn't be where it
is today without the work that you did 20 years ago.
You've helped us. You've expanded and provided
accessibility, greater access to justice for people
throughout our city for the work that you've done.

CHAIRPERSON GENNARO: Well, I was getting a lot
of complaints back in the day, from vendors, from
this, from that. And also, you know, we've got--
we've got, you know, DEP, who is-- you have an entity
within DEP that is hearing like fire violations and
noise violations, and all kinds of different-- and
sanitation violations. And, you know, the ECB of
that era didn't have, like, such a great reputation.
I thought it's a good idea to, you know, to put it
into OATH where, you know, OATH has got some game.
So I thought that would be a better place, there
would be more, there would just be better justice
meted out. And people would go to ECB, and then
they'd have to come back another day. And, you know,
I used to get a lot of complaints. And I was, again,

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2 Chair of the Committee at that time. And then I--

3 You know, overseeing DEP, and I'm like, we should--

4 we should move this to OATH. So, um, I'm glad for

5 all the work that you've done. And vendors and other

6 people that used to get jammed up at you know, ECB--

7 Let's just say I don't get complaints anymore. And

8 so that is a testament to your good, you know,

9 stewardship of the-- of the ECB and, you know,

10 adjudicating all stuff is not really what DEP is all

11 about. That's what you're about. So that's where

12 that came from. And so, thank you for coming before

13 us.

14 And now we have the face of OATH at our

15 committee, and this is your first time before this

16 committee, so pick up your door prize before-- as

17 you're-- as, you know-- We don't really have door

18 prizes here.

19 DEPUTY COMMISSIONER CASTELLI: Thank you, Chair.

20 Thank you members of the Committee. Thank you

21 members of the Committee.

22 CHAIRPERSON GENNARO: Lincoln is just going like

23 this, just going like this.

24 DEPUTY COMMISSIONER CASTELLI: I'm going to give

25 you my card, Councilmember.

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2 CHAIRPERSON GENNARO: Okay, thank you very much.
3 We want to call, you know, DEP forward. I'd ask DEP
4 to get themselves situated and sworn. I'll be back
5 in two minutes to hear their statement.

6 [TO MINUTES SILENCE]

7 Okay it is always a pleasure to have DEP with us,
8 and you know, they are folks I go back with a long
9 way, Deputy Commissioner Licata, Mr. Page-- Well, you
10 have your-- I just want to call everybody by the
11 right title. But hello. Hello. Great to have you
12 here. I look forward to hearing your good testimony.
13 Everyone's all duly sworn and everything? Okay. All
14 right with that, we'd be-- Oh, they haven't been
15 sworn in? Okay. Now if Counsel could swear in the
16 witnesses.

17 COUNSEL: Please raise your right hand. Do you
18 affirm to tell the truth, the whole truth and nothing
19 but the truth before this committee and to respond
20 honestly to Councilmember questions?

21 PANEL: I do.

22 CHAIRPERSON GENNARO: Thank you very much.
23 Again, a pleasure. Please-- Please commence with
24 your good testimony.

25

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2 RESILIENCY AND WATERFRONTS 53

3 DEPUTY COMMISSIONER LICATA: Good afternoon,
4 Chairman Gennaro, and members of the Environmental
5 Protection Committee on-- We would like to begin just
6 by introducing my colleagues. As you noted, this is
7 Mark Page. He's the Executive Director of the Bureau
8 Environmental Compliance. And sitting to his left is
9 Alyssa Preston. And yes, I knew you would recognize
10 that name.

11 CHAIRPERSON GENNARO: Oh, Alyssa. Have you been
12 in DEP all these years? Oh, well, it's been a long
13 time. So good to see you. So good to see you.

14 DEPUTY COMMISSIONER LICATA: She's the Director
15 of Air and Noise Policy and Enforcement.

16 So, I am Angela Licata, and I'm the Deputy
17 Commissioner for the Department of Environmental
18 Protection. And I'm-- Thank you for the opportunity
19 to testify today.

20 I'd like to begin with a brief overview of DEP's
21 noise enforcement work, including the citizen
22 complaint program, and then we'll speak to each of
23 the bills being considered today.

24 To begin, DEP and my colleagues were very proud
25 of the work that we had done to improve the quality
of life for all New Yorkers by enforcing the city's

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2 noise code. The code does ensure that the city that
3 never sleeps remains vibrant and active while meeting
4 the needs of those who live in, work in, and visit
5 the city by reducing noise pollution and protecting
6 public health.

7 DEP and the New York City Police Department share
8 responsibility for enforcing the noise code. DEP's
9 responsibilities focus on commercial music,
10 construction noise, noise from buildings' heating and
11 ventilation equipment, and DEP's noise inspectors
12 proactively approve and inspect noise mitigation
13 plans and respond to approximately 50,000 noise
14 complaints each year.

15 The noise code has been updated twice in recent
16 years. First, as Chairman Gennaro explained, was in
17 2005. And then we had some updates and improvements
18 that were made with Local Law 53 of 2018. And we're
19 very grateful for the leadership and the support of
20 the New York City Council, and especially of the now
21 Chair and then Chair Gennaros for making these
22 improvements. We are forever looking to-- continue
23 to make these improvements. So we don't want to rest
24 on our laurels. But we do want to appreciate how far
25 that we've come since the 1970s.

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2 CHAIRPERSON GENNARO: Although I will indicate--
3 just indicate that Local Law 53 of 2018 was when I
4 wasn't here.

5 DEPUTY COMMISSIONER LICATA: Yes.

6 CHAIRPERSON GENNARO: So anyone who has got a
7 problem with that law, it's not-- that ain't me, you
8 know? And so-- but it's always-- it's great to be
9 partners with DEP. We've done a lot of great things
10 together over the years, the Council and DEP. Please
11 continue. Forgive my interruption.

12 DEPUTY COMMISSIONER LICATA: These critical
13 updates standardized commercial music regulations,
14 require that these noise mitigation measures for
15 construction activities, created a section that
16 prohibits excessive noise for motor vehicles. Since
17 the 2018 changes, DEP has been required to respond to
18 after-hours noise complaints in specific timeframes,
19 and requires that all noise mitigation plans be filed
20 electronically and be available for public
21 inspection. These changes have significant--
22 significantly strengthened DEP's enforcement.

23 In addition to the proactive enforcement DEP
24 inspectors focus on the areas of known complaints,
25 and they also have very specific training, and can

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2 use their discretion to determine if there is a
3 violation or not. If a inspector determines a
4 complaint is justified under the noise code, the
5 inspector informs the business of the alleged
6 violation and what can be done to correct it, and
7 that is generally before a violation is issued.
8 Depending on the severity of the alleged violation
9 and whether or not it is purposely and egregiously
10 performed, these are the levels of discretion that
11 our inspectors are trained to provide.

12 And our goal again, we need to be really clear,
13 is to bring businesses into compliance with the noise
14 code and to reduce noise pollution for the benefit of
15 the public and its public health. The goal is not to
16 be punitive. The goal is not to make profits,
17 although as we stated, we do not hesitate to issuing
18 summonses to bad actors.

19 CHAIRPERSON GENNARO: Angela, I'm going to
20 confess that I've lost my place.

21 DEPUTY COMMISSIONER LICATA: We're going to start
22 with a paragraph.

23 Of course DEP's inspectors will never be able to
24 address all of the city's noise issues as they are
25 happening.

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2 CHAIRPERSON GENNARO: Page 2? Is this page 2?

3 DEPUTY COMMISSIONER LICATA: Mm-hmm.

4 CHAIRPERSON GENNARO: Where is-- say that again?

5 DEPUTY COMMISSIONER LICATA: Of course, DEP's
6 inspectors will never be able to address all of the
7 city's noise issues as they are happening.

8 CHAIRPERSON GENNARO: Keith, you got this? Not
9 the one with--

10 Oh, my testimony is missing a page. I'm
11 vindicated.

12 We should have music in the background as we kind
13 of figure this out.

14 DEPUTY COMMISSIONER LICATA: Okay, beginning with
15 the paragraph--

16 CHAIRPERSON GENNARO: I don't have anything in
17 front of me now. I will soon.

18 MAJORITY LEADER POWERS: The testimony that was
19 given to us, I think, was missing some pages. So--
20 at least on some of the legislation, it was missing
21 several bills.

22 CHAIRPERSON GENNARO: Yes. There was a missing
23 page. Now I have the page. It is a partial
24 paragraph, and the first whole paragraph begins, "Of
25 course, DEP's inspectors..." right?

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2 RESILIENCY AND WATERFRONTS
3 DEPUTY COMMISSIONER LICATA: Correct.
4 CHAIRPERSON GENNARO: Okay, sorry about that.
5 Sorry for the hubbub.
6 DEPUTY COMMISSIONER LICATA: Okay. So it says...
7 Of course, DEP's inspectors will never be able to
8 address all of the city's noise issues as they are
9 happening. We simply cannot be everywhere all the
10 time. This is why citizen enforcement can be a
11 useful complement to DEP's work. Local laws allow
12 us-- allows anyone to provide evidence of potential
13 violations of certain sections of the noise code to
14 DEP. DEP or the reporter can then bring this
15 evidence to the Office of Administrative Trials and
16 Hearings for a hearing to determine whether a
17 violation has taken place. We believe citizen
18 enforcement is valuable, but it needs to be fair.
19 Citizen enforcement of the noise code should pursue
20 the same goal as DEP lead enforcement, encouraging
21 compliance and reducing noise pollution.
22 Unfortunately, that has not been the norm.
23 CHAIRPERSON GENNARO: If I could just jump in--
24 Again, sometimes, if I don't do it now. And-- I'll--
25 Please pardon the back and forth. And so with regard
to the citizen enforcement, you talks about-- here's

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2 how it works. Local law allows anyone to provide
3 evidence of a potential violation. And so-- the
4 DEP's or the reporter can then bring this evidence
5 to-- to OATH for a hearing, but don't they have to
6 bring it to DEP first?

7 DEPUTY COMMISSIONER LICATA: They come to DEP
8 first. DEP has 30 days to either seek enforcement on
9 its own, in conjunction with the citizen or--

10 CHAIRPERSON GENNARO: So-- So somebody comes to
11 DEP and they-- they have a complaint. And so DEP can
12 send their own enforcement people out there to
13 monitor it, do what needs to be done, assess it,
14 issue violations, or whatever. So DEP gets that.
15 And-- And, failing that, like, what happens? So DEP
16 decides for whatever reason-- So if somebody brings a
17 complaint, and DEP wouldn't go out there, if it's
18 just like something that-- that that that already
19 happened, and somebody comes forward and they have
20 evidence or whatever, right? Then DEP like takes a
21 look at that. And then DEP can use that evidence to
22 issue its own violation?

23 DEPUTY COMMISSIONER LICATA: Yes. DEP can issue
24 its own violation if it witnesses. It can go out
25 there as you stated, and look--

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RESILIENCY AND WATERFRONTS

2 CHAIRPERSON GENNARO: No, but I'm asking-- but
3 can they do it based on--

4 DEPUTY COMMISSIONER LICATA: The citizen's--

5 CHAIRPERSON GENNARO: --based on the citizen's
6 information that's been brought forward?

7 DEPUTY COMMISSIONER LICATA: Yes.

8 CHAIRPERSON GENNARO: It can be a videotape. It
9 can be an audio tape. It could be a decibel level
10 reading.

11 DEPUTY COMMISSIONER LICATA: Yes.

12 CHAIRPERSON GENNARO: It could be what-- whatever
13 the heck it is, right?

14 DEPUTY COMMISSIONER LICATA: Yes.

15 CHAIRPERSON GENNARO: And so based on that, DEP
16 can issue a violation. And then DEP is the
17 complainant, and then it has to go and deal with
18 OATH?

19 DEPUTY COMMISSIONER LICATA: Yes. DEP would co-
20 sponsor that complaint. The citizen would get a
21 portion of that penalty if the penalty is upheld at
22 OATH. So they would receive some of that penalty
23 money.

24 CHAIRPERSON GENNARO: Right. Okay. And-- All
25 right. This is-- I don't want to get too much into

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2 RESILIENCY AND WATERFRONTS
3 the questions, but just-- just know that coming out
4 of this, Alyssa, there's going to be a question about
5 this section, whatever it-- wherever it is, you know,
6 whether or not Section 24-244 B-- people are using
7 that section for sound reproduction devices, which I
8 believe, and you can correct me if I'm wrong, is
9 really meant for people that are using that for
10 advertising purposes. But yet, these violations are
11 being brought to DEP for ambient noise that is
12 spilling out into the street, and therefore not.
13 So I just think that's, you know, the wrong
14 section of the code. So just get ready for a
15 question on that, and why the DEP is even
16 entertaining these, and not just-- not just
17 indicating, like, "You've got the wrong section of
18 the code. Go home." And so-- So that that question
19 is coming. Okay? Make sure I do that. Okay?
20 Please continue. I'll try to limit my jumping
21 in.
22 DEPUTY COMMISSIONER LICATA: Unfortunately, that
23 has not been the case recently. Citizen noise
24 enforcement has been a significant problem for many
25 businesses this year, with businesses receiving
multiple violations by citizen enforcers all at once

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3 without a warning, and racking up thousands of
4 dollars in fines for minor infractions. We do not
5 think this has been fair and we thank the Chair for
6 his attention to this real issue and to protecting
7 the livelihood of businesses unfairly targeted by a
8 select few citizen enforcers.

9 Citizen enforcement is supposed to be a tool to
10 reduce genuine noise pollution in circumstances where
11 DEP inspectors cannot respond in real time. The
12 program is also used for our vehicle idling program,
13 a program that has been largely successful and that
14 is playing an important role in improving air quality
15 in the city and helping communities protect
16 themselves from pollution. The idling program allows
17 citizens to film a vehicle idling and submit the
18 video with a description of the incident through the
19 DEP website. DEP inspectors then review the evidence
20 and issue a summons if warranted.

21 If the vehicle owner is found in violation at the
22 subsequent OATH hearing the citizen who submitted
23 this evidence is entitled to receive 25% of the
24 collected fine. If DEP does not issue a summons, and
25 the citizen decides to self-pursue the case with

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OATH, then the citizen is entitled to receive 50% of
the collected fine.

Some citizens have realized that the money-making
potential of the idling enforcement program and begun
to patrol neighborhoods looking for idling vehicles.
Overall, the diligence of idling enforcement has been
a positive thing for communities and our air quality.
However, there are some over-zealous, opportunistic,
citizen idling enforcers who have abused the program.
Some participants have been egregiously aggressive
towards our staff and some have tried to defraud the
system by doing things like filing fake videos or
resubmitting the same video repeatedly.

Our staff has thwarted their attempts to submit
falsified evidence, and they are also successful in
fact that a few participants started looking for new
ways to profit from the citizen enforcement programs.
About a year ago, these few participants realized
they could file noise complaints against businesses
who are playing music outdoors. Because noise videos
do not have time minimums, they could make money more
easily.

A small number of people abused this enforcement
option and have been targeting and harassing several

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2 businesses. In fact, about 90% of the approximately
3 6000 noise complaints filed in 2023 by citizens were
4 filed by only two people. As you can see on the map
5 that we provided in testimony, these citizens have
6 been targeting specific areas of Queens and
7 Manhattan. They are mostly commercial areas where
8 they can walk down the street and record sound from
9 multiple businesses in just a few minutes. Locations
10 have citizen enforcement of Section 24-244 B which
11 relates to businesses playing music outside for
12 commercial purposes.

13 CHAIRPERSON GENNARO: Oh, I just lost my place.
14 So you have, "As you can see from this map, they can
15 do sound from multiple business in a few minutes."
16 Then you have the map. And then what happened after
17 that? Did you skip something?

18 DEPUTY COMMISSIONER LICATA: "Locations of
19 citizen enforcement of Section 24-244 B", you should
20 see, which relates to businesses playing music
21 outside for commercial purposes.

22 CHAIRPERSON GENNARO: I don't have that on mine.
23 Do you have that? Oh. Okay, that's the fine print
24 on top of the-- the graphic I'm sorry. Okay. Please
25 continue.

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2 DEPUTY COMMISSIONER LICATA: The enforcement
3 being done through citizen enforcement is hurting
4 businesses and is not helping communities. Citizen
5 enforcement is happening in areas where we do not
6 receive 311 noise complaints. No one is complaining
7 about noise from Times Square in the middle of the
8 day, but more than 1000 Citizen complaint reports
9 have been focused there. The participants are not
10 using enforcement to achieve compliance and reduce
11 noise pollution they are using it for personal
12 profit.

13 And now we're turning into the legislation.

14 Overall the legislation being considered today
15 complements DEP's work and we generally support these
16 bills. We do want to recommend a few specific
17 changes to the introduced legislation, and would like
18 to postpone consideration of Intro 1194. Intro 1194
19 current--

20 CHAIRPERSON GENNARO: Postpone consideration?

21 This is the hearing

22 DEPUTY COMMISSIONER LICATA: Not postpone the
23 hearing.

24 CHAIRPERSON GENNARO: No, I'm just saying that--
25 but this is the--

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2 DEPUTY COMMISSIONER LICATA: Well, I'm going to
3 testify about our concerns on that right now. So--

4 CHAIRPERSON GENNARO: Oh fine, fine, fine. Okay.

5 DEPUTY COMMISSIONER LICATA: It's completely--
6 Yeah.

7 CHAIRPERSON GENNARO: I thought you meant like
8 you didn't want to address it at all. Okay, and I'm
9 saying, "This is the hearing. You have to."

10 DEPUTY COMMISSIONER LICATA: Yup.

11 So currently if a business pays a fine from a
12 noise summons by a citizen enforcer, the citizen
13 enforcer can receive as much as \$660. Subsequent
14 violations have heavier fines than the first one. So
15 enforcers are incentivized to stack a series of
16 complaints against one business and deliver many at
17 once. Before a business has received one summons,
18 they already have racked up several more. Intro 1194
19 would reduce the payout collected by citizen noise
20 enforcers from a percentage of that penalty to a flat
21 rate of \$5 or \$10. This reduction would make it
22 harder for bad actors to use these violations as a
23 source of significant income. This reduced incentive
24 could reduce the volume of summons-- summonses that
25

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2 businesses receive, addressing one of the challenges
3 small businesses are facing.

4 We share the goal of reducing this undue burden
5 on small business. But we would like to work with
6 council to enact broader reforms to the citizen
7 complaint program. DEP has been working with other
8 agencies, including small business services on
9 comprehensive reforms to improve the citizen
10 enforcement program. These reforms will make the
11 program a more effective tool to combat noise
12 pollution and protect businesses from program abuse.

13 Using penalty reduction to achieve the volume of
14 complaints that a business receives only resolves one
15 of the challenges that businesses are facing. Even
16 if this bill were enacted as it is currently drafted,
17 businesses could still receive many summonses, and
18 many summonses long after the alleged violation date.

19 So, we would like to take the time to defend--
20 Oh, I'm sorry-- Summonses at once, having to take
21 the time to defend themselves at an adjudication
22 hearing and having to pay a significant fine.

23 In addition to these changes to protect
24 businesses, we want to reform the program to protect
25 city staff from repeated harassment and abuse that

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3 they have experienced. As I alluded to earlier, a
4 small number of citizen enforcers have harassed staff
5 at multiple agencies and the companies they provide
6 evidence against. Some specific issues we have dealt
7 with included several instances of aggressive citizen
8 complaints attempting to access secure government
9 office spaces, looking for specific individuals,
10 including an instance of a complainant attempting to
11 assault a staff member, aggressive verbal harassment
12 targeted at specific employees, and instances of the
13 same piece of evidence being submitted with different
14 allegations with the intent to generate multiple
15 summons based on intentionally fraudulent evidence.
16 I understand that some of your colleagues' staffs
17 have received similar aggressive communications. If
18 any Councilmember has further questions regarding
19 abusive behavior, please feel free to reach out to
20 the Administration for more details. We welcome
21 continuing this conversation.
22 The Administration therefore wants to enact
23 holistic reform legislation that would establish a
24 fixed monetary payment for citizen enforcers as this
25 bill does, but would also ensure the businesses
receive a summons in a timely manner and do not

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2 receive too many at once; limit citizen noise

3 enforcement to overnight hours when these noise

4 violations have a greater negative impact; create a

5 cure mechanism so that businesses can work with DEP

6 to resolve an issue, avoiding the need to appear at a

7 hearing and eliminating any potential fine;

8 authorizing DEP to establish clear rules for evidence

9 required with reports; authorize The City to

10 disqualify citizens from participating in the program

11 if they are found to submit fraudulent evidence or

12 exhibit abusive behavior. Further, we would like to

13 update the type of violations that can be-- be

14 reported by citizens. Noise complaints through 311

15 about ice cream trucks playing music is one of the

16 top five 311 noise complaint categories. Ice cream

17 trucks are not supposed to play music continuously

18 while they are parked. DEP inspectors cannot

19 regularly respond to these calls, so we want to

20 expand citizen enforcement to include this noise.

21 Intro 160 would amend the noise code relating to

22 interior noise at commercial establishments so that

23 noise that is generated inside but cannot be heard

24 from the sidewalk is no longer treated the same as

25 noise that is generated outside. This would include

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2 removing interior noise from citizen enforcement

3 eligibility. We think this is a clear delineation to

4 the citizen enforcement program, and it makes sense,

5 and makes the code more understandable for businesses

6 so we support this bill.

7 Intro--

8 CHAIRPERSON GENNARO: Okay. So I just want to

9 jump in for a second. And so-- You know what? Let

10 me-- Let me let me just kind of save that. Mark that

11 and save that for-- for a question. And that's an

12 alarm going off saying I have to take some

13 medication. So as soon as you finish your statement,

14 I'm going to do that. It's going to go off again in

15 a minute to remind me. But, yeah, it's a thing.

16 Okay, again, forgive the interruption. Please

17 continue. Intro 774.

18 DEPUTY COMMISSIONER LICATA: Intro 774 would

19 require DEP to measure construction related sound

20 levels inside homes whenever asked to. DEP falls

21 this practice currently, so we support this

22 requirement, and is already codified in 24-223 D for

23 after hours work. DEP recommends amending sections

24 228 and 229 to allow for readings to be taken from a

25 dwelling during the day with limits warranting a

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3 summon set to an increment of 10 decibels above the
4 ambient during the day, instead of a limit of 85
5 decibels at the weighted scale, and retain the 7 DbA
6 standard or decibels at the weighted scale for after-
hours work.

7 Intro 775 would require DEP to post the results
8 of all noise inspections online within 24 hours of
9 the inspection being completed. We request that this
10 bill be amended to extend the time window. Each
11 inspection report must be reviewed and approved by a
12 supervisor, and there are extra considerations when
13 we expect a summons to be issued. We prefer to delay
14 posting information to ensure that the information is
15 accurate. So, we would like to work with the sponsor
16 to determine a more workable timeline.

17 Intro 776 would require DEP to provide any noise
18 inspection report that was generated in response to a
19 311 call to be provided to anyone who requests the
20 report, and has the 311 tracking number. Currently,
21 FOIL requests are required to obtain these reports.
22 We support the goal of this bill but we'd like to
23 discuss it in more detail with the sponsor and our
24 colleagues at the police department.

25

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Intro 777 would add debris removal to the definition of construction work that requires a variance for after-hours noise generation. DEP currently considers debris removal in noise permit requirements as removal of material as part of the construction process. DEP does include-- supports the inclusion of debris removal in the definition of construction work.

Intro 778 would require DEP to establish the noise camera program for motor vehicles, and lays out the specifications for how a program should work and how OATH should process violations. DEP began piloting a vehicle noise camera program in 2021. After a successful pilot period, we launched the program officially in March of 2022. The program has led to more than 300 violations being issued. The use of the cameras as an effective and efficient complement to boots on the ground or field patrol enforcement efforts. We continue to learn and evolve the program, including adopting new technologies and increasing the number of camera locations.

If a noise program is required by local law, we support many of the proposed requirements including the reporting and certification requirements.

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2 However, we would like it to complement the program
3 that we have developed over the last few years and be
4 flexible enough to allow the program to evolve as new
5 technologies emerge. We're happy to work with the
6 sponsor on this legislation as well.

7 Thank you for consideration of these matters. We
8 look forward to engaging in thoughtful discussion
9 with the Chair and bill sponsors to work towards our
10 shared goal of reducing noise pollution to protect
11 the health of all New Yorkers, and we are happy to
12 answer any questions you may have.

13 CHAIRPERSON GENNARO: Thank you very much, Deputy
14 Commissioner Licata. Yeah. So we've got, like, a
15 bunch of bills by the Majority Leader. And then Bob
16 Holden and I are fighting the war on civilian
17 enforcement. And so, I'm going to yield to the
18 Majority Leader. He has questions on his bills.

19 Sergeant, I'm not putting the Majority Leader on
20 a clock. And so I recognize Councilmember Powers for
21 questions on his bills.

22 MAJORITY LEADER POWERS: Thank you. I'll try to
23 be quick anyway out of respect for everyone here. I
24 just want to ask you-- first of all, thank you for
25 your testimony. Without question, I'm happy to work

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2 with DEP to make sure that legislation we're working
3 on is efficient and effective. I think your
4 recommendations make some sense and appreciate the
5 constructive feedback on the various different
6 programs we're talking about here. And I'll have ask
7 some questions. I want to start just taking a--
8 taking a step back.

9 We were looking at some of the data around new
10 lays enforcement in the city, which-- which helped
11 inform us on the legislation and going into the
12 hearing. It feels like it's a shared responsibility
13 between DEP and NYPD right now, when you call 311,
14 and-- and file a-- or reach out to-- call the city
15 and-- and file a complaint. I don't-- I'm trying to
16 understand what is the actual separation of duties
17 there? How does the NYPD respond to calls? How does
18 the DEP respond to calls? What is the current
19 resource allocation for the DEP to noise complaints?

20 And it seems like a tremendously high amount of
21 them are going to the PD, and they're going out and
22 responding. Various levels of enforcement are
23 happening. But I guess just to understand this
24 conversation, you have to kind of understand how
25 we're doing enforcement in the first place. So can

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2 you share with us how DEP's role is shaped in this
3 conversation, and where handoff happens between DEP
4 NYPD? Or how the NYPD or DEP might share
5 responsibilities here?

6 DEPUTY COMMISSIONER SLIFKA: Yeah, thank you very
7 much for the question. So, um, first and foremost,
8 we have air and noise inspectors that cross-trained
9 individuals. We have about 65 of them on board at
10 DEP. And we are generally enforcing the sections of
11 the code that I mentioned in my testimony: The
12 commercial music, the HVAC systems. And we are
13 looking at joint operations with NYPD as well.

14 So that is something that has really been sparked
15 by the Adams Administration. We're very grateful for
16 the support that we're getting from NYPD. And I
17 think they're grateful for the support that they get
18 from us. And we do conduct a lot of shared, what we
19 call, operations whereby we're balancing the best of
20 both features of the departments. So we have
21 training on the noise meters. We can actually take
22 those measurements. A lot of our violations are
23 actually at a higher cost. So it's also a benefit to
24 NYPD to be supported by DEP. And we have had many of
25 these shared operations, especially during the

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2 weekends, and especially in areas where we're having
3 very high complaints.

4 MAJORITY LEADER POWERS: So let me just follow up
5 to that. If I have a noisy construction site, let's
6 say, an after hours variance, or even just a noisy
7 construction site that feels like it's exceeding the
8 decibel limit. I call 311. Is it DEP or NYPD who is
9 showing up?

10 DEPUTY COMMISSIONER SLIFKA: It would be DEP.

11 MAJORITY LEADER POWERS: DEP?

12 DEPUTY COMMISSIONER SLIFKA: For construction
13 noise, yes.

14 MAJORITY LEADER POWERS: Okay, because that's in
15 the bucket that you select from. So, if I call 311,
16 they are farming it out to the agency where they
17 believe the jurisdiction lies?

18 DEPUTY COMMISSIONER SLIFKA: Yes.

19 MAJORITY LEADER POWERS: So anything outside of
20 the ones that you named would be going to the NYPD
21 for them to respond to: If it was a noisy neighbor, a
22 noisy party, or something like that, which I do see
23 they respond to a lot.

24 DEPUTY COMMISSIONER SLIFKA: Yes.

25 MAJORITY LEADER POWERS: Okay.

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DEPUTY COMMISSIONER SLIFKA: Generally, the 311
scripts are very precise about who is getting routed
which violation. I don't have those scripts here
with me, but we could provide them.

MAJORITY LEADER POWERS: Okay. What is the
average response time for your 65 inspectors?

DEPUTY COMMISSIONER SLIFKA: We are generally
going within a one-week timeframe. So if we have a
call, let's say there's a dislodged construction
plate, right? Let's say it's roadwork. And we could
respond to that within a day or two. But let's say
we're responding under our Section 24-231, where a
resident would like us to take a reading within their
premise. That we would schedule an appointment for.
So they may have called us about an activity that's
happening on a Friday night, and they know that they
need to schedule that appointment with us for the
next Friday night. And that's why we have those
timeframes that's reserved for those types of events.

MAJORITY LEADER POWERS: I mean, unfortunately,
for the person who's staying up all night, pulling
their hair out, because they have a noisy thing going
on outside their premises, it's-- the next Friday
won't be-- will be far too long to respond to that,

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2 which I think we're trying to get into that,
3 including providing people more information, you
4 know, whether it's 24 hours, 48 hours, whatever it is
5 of that extra report. I think we are sometimes
6 lacking the ability to enforce in real time, which is
7 really when the noise issues tend to happen, and they
8 need enforcement right now.

9 I don't disagree with the NYPD being part of it,
10 because they-- we have precincts in all of our
11 neighborhoods, and they responded to it quickly. But
12 of course, we're pulling them off one assignment to
13 do another when we do that.

14 How many decibel meter machines do you have that
15 are dedicated to construction?

16 DEPUTY COMMISSIONER SLIFKA: Let me just go back
17 to your earlier comment. I think that was an
18 excellent point. We do have rapid response units in
19 place, and the way that we can work around making the
20 appointment, let's say, for a citizen to issue under
21 that section of the code, that is the benefit of
22 having various sections of the code.

23 MAJORITY LEADER POWERS: Right. About the
24 civilian-- you're talking about the benefit of having
25

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2 the civilian complaint program, if you reform it in
3 the way you desire to?

4 DEPUTY COMMISSIONER SLIFKA: Yeah. It's the
5 benefit of having that unreasonable noise. So, if we
6 wanted to respond to that complaint in real time, we
7 could get out there and we could respond to that
8 complaint, we could respond to various sections used
9 to get at the same purpose.

10 MAJORITY LEADER POWERS: Okay.

11 DEPUTY COMMISSIONER SLIFKA: So just wanted to
12 make that-- [TO DEPUTY COMMISSIONER CASTELLI:] How
13 many noise meters do we have?

14 DEPUTY COMMISSIONER CASTELLI: All of the 65
15 inspectors have noise meters.

16 MAJORITY LEADER POWERS: And those can read any
17 level of noise, whether it's construction noise, or--

18 DEPUTY COMMISSIONER SLIFKA: Yes.

19 MAJORITY LEADER POWERS: So basically it just
20 records the sound-- the decibel, like, level?

21 DEPUTY COMMISSIONER SLIFKA: They are very
22 sophisticated machines. They are calibrated
23 regularly, and the inspectors are trained on them.
24 They're able to evaluate decibel levels on the A
25 scale, which is what the human ear can detect. And

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2 they also kind of valuate on other octave bands,
3 which is very important to get to some of the bass or
4 C scales.

5 MAJORITY LEADER POWERS: Okay. And for-- You
6 mentioned-- We'll just go into the civilian
7 complaint program. You mentioned something around
8 there being no time minimums related when they record
9 video. Can you just explain what you mean by that
10 when-- I can read you back your part of that. But
11 there was a point when you were making, I think,
12 recommendations about it, that with some of the
13 videos, I believe, there were not timed minimums
14 required-- involved in them. So, it becomes a costly
15 endeavor. I can find my underline of that, but if
16 you-- if you recall, I can-- I'm happy to read. Uh,
17 here it is. It's uh-- I will find actually-- I'll
18 find that section and I'll come back to it.

19 But it did want to ask another thing. You said
20 90% of the approximately 6,000 noise complaints filed
21 in 2023, so this year, by citizens were filed by only
22 two people. How many total people participate in
23 that program?

24 DEPUTY COMMISSIONER SLIFKA: I think we have six.

25

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2 MAJORITY LEADER POWERS: Like what is the other
3 10%?

4 DEPUTY COMMISSIONER SLIFKA: I think we have six.

5 MAJORITY LEADER POWERS: Six civilians in New
6 York City are filing that, two are responsible for
7 90%.

8 DEPUTY COMMISSIONER SLIFKA: The majority are
9 filed by six.

10 MAJORITY LEADER POWERS: And 1000 in the area
11 around Times Square? It's my district.

12 DEPUTY COMMISSIONER SLIFKA: Mm-hmm. Yes.

13 MAJORITY LEADER POWERS: Okay. And the-- Just to
14 understand the violations once more: A citizen of
15 course can receive as much as \$660. So it's capped
16 at \$660? Or that's just how the percentage would
17 play out if you add them up.

18 DEPUTY COMMISSIONER SLIFKA: That's the first
19 violation.

20 MAJORITY LEADER POWERS: The first violation?
21 Okay.

22 DEPUTY COMMISSIONER SLIFKA: Yeah. And then
23 there would be a higher penalty for the second
24 violation. And then an even higher penalty for the
25 third violation.

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2 MAJORITY LEADER POWERS: So what are those
3 violations? First, second, third, amount wise? Not
4 the citizen complaint part of it. But to the-- We
5 have-- We presumably have some business owners here,
6 who are here to talk about this.

7 DEPUTY COMMISSIONER SLIFKA: Yeah.

8 MAJORITY LEADER POWERS: What-- What is the fine
9 on them?

10 DEPUTY COMMISSIONER SLIFKA: So the first
11 violation is, generally speaking, on the citizen
12 issued is \$440. And then the second violation is
13 \$880. And the third violation is \$1320.

14 MAJORITY LEADER POWERS: That's what the business
15 pays. And then the civilian is taking-- I think
16 right now, 25% of that?

17 DEPUTY COMMISSIONER SLIFKA: 25% of the
18 department participates, and 50% of the department
19 does not participate. And then there's also even
20 higher penalties for the first, second, and third for
21 default penalties. So they're very steep.

22 MAJORITY LEADER POWERS: Okay. Got it. So we
23 have-- I am familiar with Time Square businesses and
24 non-Time-Square businesses who have been-- have been
25 raising concerns about the program.

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2 There was a-- I can't find my other. I will find
3 it. But the question I had after that, I wanted to
4 also talk about the noise cameras, which we have a
5 legislation to codify that program, to expand it,
6 maybe perhaps to distribute it in an effective way.
7 Can you just talk to us about how that program is
8 going right now? I understand you're through going
9 through a pilot program. I've seen, I think, some
10 feedback on how it's working so far. I think you're
11 rolling it out more. Are you able to share with us
12 how many noise cameras are on the city right now? I
13 have your violation number, I think your testimony.
14 But just-- Any feedback on what-- what the department
15 is learning about that program as you're rolling it
16 out?

17 DEPUTY COMMISSIONER SLIFKA: Yeah, so we're very,
18 very pleased with the program now. We had one camera
19 where we were piloting. We moved it several times.
20 So, we practiced at different locations. We have
21 learned that we need to have a certain configuration
22 or roadway geometry for the camera that is part of
23 the microphone system to be very deliberate in terms
24 of discerning which vehicle generated the noise. But
25 we are doing so now quite successfully. We currently

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2 have nine cameras that we've purchased, and we have
3 seven that are and have been installed.

4 MAJORITY LEADER POWERS: Say those numbers one
5 more? You have nine purchased and seven installed?
6 Okay.

7 DEPUTY COMMISSIONER SLIFKA: And seven installed.

8 We've been generally issuing or violations off
9 the one camera. So this should expand quite rapidly,
10 very quickly as these other nine cameras come online.

11 MAJORITY LEADER POWERS: And location wise, I
12 think I read something-- Long Island Expressway,
13 difficult to differentiate between vehicles because
14 of the fine, but what are you learning in terms of
15 geographic location?

16 DEPUTY COMMISSIONER SLIFKA: We're looking
17 throughout the five boroughs. And in fact, we've had
18 a lot of recommendations from Councilmembers for
19 where they're experiencing a lot of complaints. And
20 really, you know, your constituents are the eyes and
21 ears on the ground. So we do take their
22 recommendations very seriously. In fact, I believe
23 that based on the camera experiences that we've had
24 so far, that they have been proven very right,
25 because we're issuing a lot of violations, not just

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2 for the loud muffler noise, but also for unnecessary
3 horn honking that is not related to emergency
4 situations.

5 MAJORITY LEADER POWERS: Okay, just to be
6 respectful of the other sponsors here and the Chair,
7 when to stop there. We'd be happy to continue to
8 talk with the department about my legislation, the
9 five bills we have. We think there's more to do
10 here, and expanding this enforcement around this
11 issue is an easy way to deliver some wins for New
12 Yorkers who are pulling their hair out. And we get--
13 These are all I think informed by real life
14 experiences. So, I look forward to working with you
15 guys on that. I appreciate it.

16 DEPUTY COMMISSIONER SLIFKA: Okay. Thank you.

17 CHAIRPERSON GENNARO: Thank you, Mr. Majority
18 Leader. One more great package of bills that you're
19 bringing forward. I really appreciate you doing
20 this. And very happy to give you the allotment to
21 them to ask questions as long as you want. And so
22 thank you for that.

23 I just saw Councilmember Holden now. I was going
24 to ask a question before I go to him, but I just had
25 a-- the thing that I was going to read from, I want

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2 some copies made of it, because I'm going to give
3 them to DEP. And so while that's going on, I'm going
4 to recognize Councilmember Holden for questions.

5 COUNCILMEMBER HOLDEN: Thank you Chair. And I
6 just want to just follow through on Majority Leader's
7 questions on noise cameras, because they can't happen
8 fast enough. We-- You know, you have the-- the
9 mufflers that backfire, sound like gunshots. I have
10 them every single night within earshot of my home.
11 And the guy comes by every-- you know, almost the
12 same time. So, these noise cameras. Are they very
13 expensive, first of all? There's probably different
14 stock-- different makes and models and so forth. And
15 how-- how expensive are they? Because that'll
16 dictate how many we put up, I guess.

17 DEPUTY COMMISSIONER SLIFKA: Yeah, they're
18 running about \$50,000.

19 DEPUTY COMMISSIONER CASTELLI: 35.

20 DEPUTY COMMISSIONER SLIFKA: 35? Yeah, \$35,000.
21 They will improve.

22 COUNCILMEMBER HOLDEN: \$35,000 each?

23 DEPUTY COMMISSIONER SLIFKA: Each.
24
25

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2 COUNCILMEMBER HOLDEN: Okay. And you have nine
3 cameras. Seven were installed. But how come the
4 other two weren't installed yet?

5 DEPUTY COMMISSIONER SLIFKA: They're just going
6 up now, as we speak. We have staff that are
7 employing them.

8 COUNCILMEMBER HOLDEN: Now, so these-- And I'm
9 worried because when I hear, "We don't have that
10 many," I'm just worried that they're going to be in
11 Manhattan, and not in Queens. Only because-- you
12 know, there's-- there's a bunch of bills that we
13 have, but I think we also have to sleep in Queens
14 too. And we chose to live in residential areas
15 mostly. Yet we have things that we've never seen
16 before. We have-- First of all, why would somebody
17 modify their muffler to make it sound like gunshots?
18 We've never had that before. We had some people that
19 just soup up their cars. And obviously that happens.
20 It's always happened. But now there's a strange
21 phenomenon. People just like to make noise.

22 And if the cameras are that successful, and can
23 generate-- Again, I just wanted to ask about the
24 fines. Let's say you do get a guy with a muffler and
25 you caught them. What's the fine?

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2 DEPUTY COMMISSIONER SLIFKA: \$800.

3 COUNCILMEMBER HOLDEN: \$800. This is why I like
4 DEP, when they're involved. Because when NYPD is
5 involved, and I just want to ask a couple of
6 questions. I guess-- I'm on the clock, right? Yeah,
7 I see.

8 CHAIRPERSON GENNARO: We're-- We're partners on
9 this whole civilian thing.

10 COUNCILMEMBER HOLDEN: Okay. So-- So--

11 CHAIRPERSON GENNARO: Sometimes they get off the-
12 - plus I'm looking at my stuff, so knock yourself
13 out.

14 COUNCILMEMBER HOLDEN: No, I think I-- Okay.

15 CHAIRPERSON GENNARO: It's good.

16 COUNCILMEMBER HOLDEN: Just-- Just the
17 coordination between NYPD and DEP, because I've had
18 chronic locations where NYPD cannot handle. They
19 just-- The local precinct, and I listen to the
20 scanner-- They're busy with 911 calls. The-- the
21 noise complaints are when they get around to it. And
22 it's rarely now with the new police department, is it
23 within eight hours like they promise on 311. It's
24 sometimes the next day, 24 hours, and of course the
25 noise has probably gone.

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And so when does-- when does NYPD-- are they
mandated to contact the DEP at one point because they
can't address is this? It's a chronic location?

DEPUTY COMMISSIONER SLIFKA: So that's an
excellent question. And thank you for it. When we
do have those chronic locations (and again, I just
want to recognize Mayor Adams and Commissioner
Agarwal at DEP, because this has really improved
under their tenure), the agencies, or the police
department, or the DEP are working together with
these joint operations, and again blending the skill
sets of both departments really well, where we can go
out and do the technical work, we can do the
measurements, we can issue to the offending parties
at the higher rate of penalty. Whereas the police
department is helping us safely access some of these
locations. We do not have armed personnel, so it is
very important that they stay safe.

So it has really been a wonderful blend. If you
have locations, you should please provide them to us.
Because we are constantly on the move with these
joint ops.

COUNCILMEMBER HOLDEN: Yeah, normally it's-- it's
neighbor and neighbor who say, "Well, they're playing

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2 the radio too loud," that kind of thing. And-- But
3 the police increasingly now cannot handle this.
4 That's why-- But I'm also wondering, with all these
5 packages of bills that we have, are 65 inspectors
6 enough to handle this-- this load here now? Because
7 I-- I don't know how you promote the awareness of the
8 citizen noise complaint program. Because a lot of
9 people don't know about it. And maybe we would get
10 more people participating, rather than the bad actors
11 that you say they're doing it for profit.

12 But it's not-- it's not under the-- you know, if
13 we did promote this more, we might get, really, to
14 the point where enforcement is, and we do have--
15 enforcement is good-- and we do have a livable city.

16 But right now, again, I can't get the police to
17 handle parking summonses anymore in my district.
18 It's so bad because they're handling increased 911
19 calls.

20 DEPUTY COMMISSIONER SLIFKA: Yeah. That's a very
21 sensible recommendation. And we agree that we could
22 do a better job of marketing this. I think we've
23 been a little reluctant, holding off, because we'd
24 like to make these reforms first so that we can
25 ensure that we have a successful program to promote.

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2 So we would greatly appreciate working with you for
3 it.

4 COUNCILMEMBER HOLDEN: So-- and I like the
5 strategy: "Let's get the program to where we it'll
6 function properly. And we can get, you know, get
7 some of these issues solved, whether through
8 legislation or regulations." But I do like the idea.

9 But I would like to see the program operate.
10 And-- Because I'm dealing with the same locations
11 over and over again. And I did speak to the
12 Commissioner about this. But I do-- On chronic
13 locations, I recommend DEP because that will put an
14 end to it. You get a you know, a few \$1,000 fine,
15 you're not going to be playing, you know, music very
16 loud, constantly, every night, or just on weekends.
17 So I like that idea.

18 So-- But do you need more inspectors? That's
19 what I'm, you know-- Because 65 for the entire city
20 of New York, and noise seems to be one of the biggest
21 complaints on 311.

22 DEPUTY COMMISSIONER SLIFKA: Yeah. Um, it's a
23 tough question to answer during these budget
24 constraints. We do feel like we have enough to
25 respond to the complaints that we're getting within

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3 the mandated timeframes through the mayor's
4 management report. We're always meeting our targets.
5 However, additional staff would always be welcome.
6 Clearly, you know, we would put them to good use. I
7 will say that in recent history, we've been working
8 much more efficiently. We're working smarter. We
9 have utilized technology to our advantage. We have
10 heat maps. We call them the heat maps. They're--
11 Generally when we can see complaints coming in, our
12 supervisors can see that in real time, and they can
13 deploy people to those areas. So, yes, we feel
14 somewhat constrained, as all agencies are now. But
15 we do feel like we are working as efficiently as we
16 possibly can. And, through the use of technology,
17 there's probably room for additional improvement.
18 COUNCILMEMBER HOLDEN: Right. Let me just go
19 back. And last question, I promise you.
20 The biggest-- One of the biggest complaints we
21 get, and probably the most frustrating because the
22 police can't catch these guys, the guys that play
23 their music very loud in the car, and they ride
24 around, and they wake the whole neighborhood up. And
25 they set-- they even set up-- there's-- it's so loud,
not only with their mufflers, but they're setting off

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2 car alarms as they drive down the street. A camera
3 program that would catch these guys, you know, again,
4 as long as it we don't identify where these cameras
5 are, you know? Like if people know that-- where the
6 speed cameras are, so they don't, they'll drive down
7 every other street, but they'll avoid those streets,
8 or at least slow up. Are these cameras hidden? Are
9 they noticeable?

10 DEPUTY COMMISSIONER SLIFKA: They're hidden in
11 plain sight.

12 COUNCILMEMBER HOLDEN: Okay.

13 DEPUTY COMMISSIONER SLIFKA: We have had a
14 circumstance where one was detected, and absolutely
15 it was avoided. There's a lot of clubs, these
16 automobile clubs. They got the word out really
17 quickly. And we were able to get there. We moved
18 the camera as quickly as they were able to identify
19 it. So, we do try to disguise them. And we do keep
20 the location secret.

21 COUNCILMEMBER HOLDEN: Okay, but I'm just
22 offering my-- my budget-- a portion of my budget that
23 I get in my council office for these cameras, because
24 I think they'd be a godsend for peace and quiet, and
25

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2 we need to sleep at night in New York City. Thanks
3 so much.

4 DEPUTY COMMISSIONER SLIFKA: You're welcome.

5 CHAIRPERSON GENNARO: Thank you, Councilmember
6 Holden. Pardon me. I'm going to take some water.

7 Okay, folks, I'm having a sidebar with Alyssa
8 Preston about-- about an appeal from a citizen
9 enforcer, or-- versus Jackson Hole Restaurant. And
10 the appeal was dated July 27, 2023. And by my
11 reading of it (and it is pretty plain language), it
12 seems to indicate quite clearly that, you know, with
13 regard to-- with regard to sound that is emanating
14 from the interior of an establishment, and that--
15 that 24-244 B is the wrong section of the code for
16 that. It's really meant more for outward facing
17 speakers, if you're trying to draw people in for you
18 know, as I said, before "come on in and buy neckties
19 here" or whatever.

20 And so, with this having been put forward by
21 OATH, in July 27, 2023, the question would be-- It
22 seems to me that OATH has established that 24-244 B
23 is the wrong section of code for the for-- for the
24 citizen enforcers that are coming forward with these
25 with-- with these violations. Now with-- with this

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2 in place-- And this also seems to clash a little bit
3 with the-- with the August, whatever it was,
4 resolution of the board that says, "Okay, if we can
5 establish that-- that the that the infraction, or the
6 problem, or the violation has been fixed, then you
7 know, we're not going to levy a penalty."

8 And so, in July, it says it's the wrong section
9 of the code for this kind of violation. In August
10 OATH is saying, "Well, as long as you can show that
11 it's fixed, then we're not--" They-- they don't seem
12 to agree with one another. But I'm going with the
13 July one, because it just plain old says that it's,
14 you know, the wrong section of the code.

15 Now, if I'm DEP, and I get the ability to dismiss
16 violations as frivolous, or whatever the term is, if
17 you're using the wrong section of the code, then why
18 not just quash it there rather than just not act and
19 have the civilian enforce who go to OATH, have the
20 person default (59% default), and then the city gets
21 its money, and then the bounty hunters get their
22 money. It just seems that this provides some clarity
23 as to that section of the code being in the wrong
24 section of the code, that-- that is being used by the
25 civilian enforcers.

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2 And so that's kind of my statement. And so the
3 question would be that, since this has happened, and
4 there's been some clarity made, that this is the
5 wrong section of the code, has DEP changed the number
6 of violations that it is dismissing from the civilian
7 enforcers, when they're presented to DEP, based on
8 this, you know, appeal by OATH, saying it's the wrong
9 section of the code? And what is DEP's sense of
10 this-- of this whole thing, being like the wrong
11 section of the code? And why-- I don't want make a
12 characterization, but why is DEP sitting back and let
13 he's letting these things go through to-- and tying
14 up OATH, and getting the business owners to come
15 down? They're most likely not; 59% don't. And so
16 it's-- You know, forgive the cynic in me-- that you
17 know, it's money for city. Okay. And then, you
18 know, money for the-- for the for the bounty hunters.
19 I don't get it.

20 And so I would just like, you know, someone to
21 opine on what's going on here, when we have a
22 document in hand, by my interpretation, showing that
23 that section is the wrong section of the code for all
24 of these violations that are being put forward by the
25 civilian, or by the what I call the-- hang on, yeah,

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2 by the civilian enforcers. Some of you call them
3 citizen enforcers. I prefer civilian enforcers. So
4 that's my statement-question-statement-question. So
5 there you have it. I don't want to be you right now.
6 But sorry.

7 DEPUTY COMMISSIONER SLIFKA: So thank you for
8 that. We are aware of the appeals decision that
9 you're referencing. I think it's important to draw
10 the distinction that--

11 CHAIRPERSON GENNARO: I need you to speak right
12 into the mic like this, you know?

13 DEPUTY COMMISSIONER SLIFKA: Sorry. Is that
14 better?

15 CHAIRPERSON GENNARO: Yes.

16 DEPUTY COMMISSIONER SLIFKA: So yes. We are
17 aware of that appeals decision. I think it's
18 important to point out in that particular appeals
19 decision, the court focused on the fact that they
20 were using it for the entertainment of the dining
21 population, and they also pointed out that that
22 particular location referenced in the appeal was near
23 the Grand Central Parkway. So it was very hard for
24 the citizen to prove it was for commercial or
25 business advertising purpose.

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2 CHAIRPERSON GENNARO: No, just stop right there.

3 I'm not-- I'm not following that line of--

4 DEPUTY COMMISSIONER SLIFKA: I'm going to explain
5 it to your point.

6 CHAIRPERSON GENNARO: Yeah.

7 DEPUTY COMMISSIONER SLIFKA: So I think it's
8 helpful that appeals decision, because there's no
9 longer presumption that just because it's audible,
10 that they're innately in violation of 244. So what
11 DEP is doing is we're reviewing as we have been--

12 CHAIRPERSON GENNARO: But-- But I'm going to take
13 issue with that. Because just-- "plainly audible" or
14 whatever, you know, gets into the whole, you know--
15 That's something that we put the bid 20 years ago
16 with-- with the noise meters and all that. And so
17 like, that's what we're supposed to be doing. And so
18 the whole plainly audible standard, which is like the
19 unreasonable noise standard, is, you know, harkens
20 back to a day before we did the noise meters and all
21 that, and we put that to bed 20 years ago, and so I
22 can't get-- I can't get past that.

23 DEPUTY COMMISSIONER SLIFKA: So I understand your
24 consternation. So 244 B is in the code, and that

25

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2 does have a statement that it basically must be for
3 commercial or business advertising purpose. DEP--
4 CHAIRPERSON GENNARO: Advertising purposes.
5 DEPUTY COMMISSIONER SLIFKA: Right.
6 CHAIRPERSON GENNARO: So 244 B--
7 DEPUTY COMMISSIONER SLIFKA: For commercial.
8 CHAIRPERSON GENNARO: --is for advertising
9 purposes. But yet all the bounty hunters are going
10 there and putting their cell phone, or whatever the
11 hell it is, you know, like, you know, right up
12 against the glass. And, you know, DEP could have
13 been dismissing these things from-- from the get go.
14 DEPUTY COMMISSIONER SLIFKA: So we can't--
15 CHAIRPERSON GENNARO: So why aren't they-- So why
16 weren't they before? And certainly, why are they not
17 doing that now?
18 DEPUTY COMMISSIONER SLIFKA: So we are just
19 dismissing a great portion of the citizen complaints
20 that come to us, based on lack of appropriate
21 evidence. But we have not been--
22 CHAIRPERSON GENNARO: Well--
23 DEPUTY COMMISSIONER SLIFKA: --opining and
24 adjudicating whether or not, you know, what the case
25 specifically is.

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2 CHAIRPERSON GENNARO: Yeah, but certainly DEP is
3 in a position to know whether or not the wrong
4 section of code is being-- is even being applied.
5 Doesn't that give-- If someone comes forward to DEP,
6 you know, a complainant, and then they have this, oh,
7 but-- So do they come to you with a ticket, or do
8 they just come to you? Or they-- they come to you
9 with their-- with their homemade ticket--

10 DEPUTY COMMISSIONER SLIFKA: They come to us
11 first. We have 30 days in which to review the
12 citizen complaint. Um, for a portion of them, we
13 determine that we don't believe that the evidence is
14 sufficient for anybody to pursue that complaint. So
15 just based on--

16 CHAIRPERSON GENNARO: Do you have any kind of--
17 any kind of statistic on-- for the civilian
18 enforcers--

19 DEPUTY COMMISSIONER SLIFKA: What is the number?

20 CHAIRPERSON GENNARO: How many come to you that
21 have been dismissed by-- or whatever the word is, you
22 know...

23 DEPUTY COMMISSIONER SLIFKA: Yes. We have that
24 number. So... If you want to report that. But
25 ultimately, I agree that since we have these

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2 decisions now, I think that we do (and you're making
3 that point) that we probably have the basis of more
4 dismissals. And we-- we can do that. That takes
5 staff away from DEP's other business. But we
6 certainly -- based on what we're trying to do to
7 support our local economy and our small businesses,
8 now that we have these rulings and decisions -- we
9 can probably dismiss a great deal more. But also the
10 reforms that we are proposing, I believe, will
11 eliminate this problem in the future. So these--

12 CHAIRPERSON GENNARO: Right. And certainly
13 that's a good conversation. But, you know, right
14 now, we have a situation where, you know, 59% of the
15 businesses get these things. They don't show up.
16 They get whacked. And then, you know, the bounty
17 hunters get all their money, \$660, whatever. And--

18 And this is, you know, by your own testimony, and
19 the strong language in your testimony it's a real--
20 it's a real blight and a real problem, and a real,
21 you know, imposition on businesses in the city. And,
22 you know, we in government just-- just don't really
23 have the, you know-- don't have the luxury of just
24 putting, you know, harsh language, in testimony, when
25 DEP comes before the Council. The whole idea is to,

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2 once these decisions come forward, and they're, you
3 know, moving the needle on what is and what is not,
4 you know, a valid violation, you know?

5 DEPUTY COMMISSIONER SLIFKA: Mm-hmm.

6 CHAIRPERSON GENNARO: Then, you know, then DEP
7 not only has the right, but-- but the obligation to
8 make sure that it steps up and says, "Okay, we can
9 do-- We can come down harder on these." And then--
10 And then that has done that has a chilling effect on
11 the people who are writing the violations in the
12 first place.

13 DEPUTY COMMISSIONER SLIFKA: Yes. We can
14 dismiss--

15 CHAIRPERSON GENNARO: Because they are-- they are
16 like starting to get shut down and shut out, because
17 they're using the wrong damn section of the code,

18 DEPUTY COMMISSIONER SLIFKA: We can dismiss based
19 on meritless and frivolous-- I believe that's the
20 language of the section. And if we determine-- It's
21 just very, very difficult, sometimes by viewing those
22 videos to determine what the intended purpose is, of
23 those speakers. It is just difficult for us. And
24 we-- There's that blurry line that we don't like to
25 cross, which is that we are not the adjudicating

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2 body. That would be OATH. So that's the fine line
3 that we're walking.

4 CHAIRPERSON GENNARO: I'll put that under the
5 category of what I call "nice try", you know what I
6 mean? And-- And I would have said the same thing,
7 if I were you. But you know, the fact remains that,
8 you know, with-- with--

9 And again, OATH too. They got this thing in
10 July, and then they got this thing in August that
11 don't appear to me to, sort of, agree. But both are
12 kind of, in different ways, sending the message that
13 we're sick of this nonsense. We don't want to do
14 this anymore. We got businesses getting jammed up.
15 We got people walking away with like, pockets full
16 of-- hundreds of thousands dollars a year from this,
17 and we're helping them essentially, you know,
18 perpetuate a scam. And this-- this can't be. And--
19 And, you know, I wouldn't want to be part of DEP top
20 management that has got to shift resources in order
21 to, you know, make this thing go away. But, you
22 know, it sort of is what it is, and the people who
23 are paying the price is not-- it's not DEP. It's
24 these businesses that are getting these violations.
25 They don't know what they are. They don't want to

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2 hire a lawyer, or they don't know, or whatever.

3 They're trying to run their business. They've got to

4 take a whole day off and go down there. They don't

5 know what they're going to face. "And if I hire

6 lawyer and do this, I'm just going to break even

7 anyway. So why don't I just pay the vig, so to

8 speak?" Vig is a slang term. Most people-- Most

9 people might know what that is. But, you know,

10 those, my age and older would probably know that.

11 But-- So this is my-- You know, this is- this is

12 what I get from-- people know I'm Chair of the

13 Committee. I get-- I get businesses from all over

14 the city like yelling and screaming at me. And then

15 I get the bounty hunters yelling and screaming at me

16 with their, you know, very aggressive tactics and--

17 and, you know, being aimed at my staff, and I'm like,

18 "What the heck are we doing here?" And so: Happy to

19 work, you know, going forward with, you know, things

20 that we could and should do. But I think there needs

21 to be a change, and there really needs to be a change

22 now.

23 And so, you know, whatever you need to do in

24 order-- well, you tell me what-- what you think is

25 going to happen now, after, you know-- you're going

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2 to go back to Lefrak and say, "Gennaro did his whole
3 thing." And so...? So...?

4 DEPUTY COMMISSIONER SLIFKA: We're riled up too
5 about this. I mean, there have been, again, a lot of
6 conversations with Small Business Services. Our
7 colleagues over there are very frustrated with this
8 program. And again, I think the best thing that we
9 can all do is move quickly on this package of
10 reforms, additional--

11 CHAIRPERSON GENNARO: I know, but right now-- but
12 right now there-- there are people-- you know,
13 they're people interacting with DEP today, on behalf
14 of bus-- The number of summonses is like off the
15 charts. And so, I'm all for the reforms, but I'm--
16 What we have in hand right now, you know-- appeals of
17 OATH, the resolution of OATH. And it would appear
18 that, since these resolutions have-- and this appeal
19 and this resolution came forward, I don't think DEP
20 has really changed the number of-- of violations that
21 they themselves are taking the opportunity to dismiss
22 as frivolous, or whatever the word is, or not
23 consistent with the code, or whatever. Or has there
24 been a difference? If there has been a-- if there
25 has been a difference, now's the time to say it, and

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2 I'll be the first one to applaud, you know? But has
3 that been the case?

4 DEPUTY COMMISSIONER SLIFKA: Well, as I said, I
5 think now we have a greater opportunity to dismiss
6 some of these cases.

7 CHAIRPERSON GENNARO: But the time is now. Like
8 this is July.

9 DEPUTY COMMISSIONER SLIFKA: And the time is now.
10 There's nothing I can do about pending cases with
11 OATH. So that's a clear distinction.

12 CHAIRPERSON GENNARO: Well, I think, you know,
13 once we do something those that have not been
14 adjudicated, you know, we could-- we could tie all
15 those up in a bow and just get rid of them. But,
16 again-- I don't play lawyer here, but you know, to
17 the extent there is this kind of, you know, mis--
18 this kind of, you know, injustice in the name of
19 justice playing out in the city, where-- where, you
20 know, business owners are getting fleeced, and you
21 know, DEP has, you know, decisions in hand, and can--
22 and can just, you know, be kind of, you know, nip
23 these at the bud, and not drag in OATH, which is
24 clearly sick of this. I think that's-- I think
25 that's the obligation. I think.

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And in the meantime, we work through, like, what we're going to do in terms of, you know, reforms, both, you know, to the civilian enforcement for noise, as well as idling, which we're not really talking about today (you did in your statement, and I thought it was important for you to do that, and so I gave you a little latitude on that), but I'm kind of like decoupling, you know, officially decoupling, at least for now. Because, you know, this is the fire that is raging, the one right now with the bounty hunters and-- and with the business, with the businesses that are being impacted by it, and, you know, government kind of throwing up his hands a little bit saying, "Yeah, we could do more but we're busy." You know, that just-- You know, in the case of this kind of wildfire, that doesn't-- that doesn't sort of carry the day. It's just not good enough.

I still like you all. It's not about that, you know? But, just, I think we need to do better.

Let me see what other-- Hang on. Oh. My very patient partner in government here and partner in the Council Lincoln Restler.

COUNCILMEMBER RESTLER: I thought you were going to call me loquacious.

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2 CHAIRPERSON GENNARO: What's that?

3 COUNCILMEMBER RESTLER: I thought you were going
4 to call me loquacious.

5 CHAIRPERSON GENNARO: Oh, yeah. You're-- You're
6 that and more, my friend.

7 COUNCILMEMBER RESTLER: I'll be brief today.

8 CHAIRPERSON GENNARO: So you thought I was-- You
9 thought I was that I was a tough customer. Okay.
10 You're going to get it now. Okay. So I recognize my
11 friend and colleague, Lincoln Restler, for questions.

12 COUNCILMEMBER RESTLER: Thank you very much. I'm
13 not giving anybody an overly hard time today. But I--
14 - I do really appreciate Chair Gennaro's leadership
15 on this topic, and comments of my colleagues.

16 You know, there is a noise complaint to 311 every
17 minute of every hour of every day for the year,
18 across the year, for the city of New York. We get--
19 I think there were 523,000 complaints last year.

20 And, you know, we get it. We live in a loud
21 city, and we're accustomed and acclimated to a
22 certain extent of it-- to a-- to a certain extent.
23 But in many areas, it is just inexcusable. And it's
24 very challenging to get any kind of meaningful
25 enforcement from DEP or from the NYPD. I recognize

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2 that I think of those 520,000 complaints, only 60-
3 something-thousand of them get sent to DEP. The vast
4 majority of them go to the police department. So we
5 should bring them in next time, Chair Gennaro, and
6 give them a hard time about their failure to enforce
7 on any of the noise complaints that we have across
8 our district.

9 The stuff that drives me the craziest are the
10 extremely loud mufflers, the extremely loud
11 motorcycles that ride through our communities and
12 have no regard whatsoever for our neighborhoods. And
13 I'm interested in just understanding where we are on
14 the camera pilot study and the status of your plans
15 to expand it. My recollection is that you've had it
16 at five different locations over the past year and
17 change, year and a half. We had at some point been
18 approached about identifying locations in our
19 district that we thought would be viable. We
20 suggested a number of locations. None had been
21 selected, as far as I know, much to my chagrin, and
22 we want you to have a presence in our community and
23 to be utilizing this technology to impose fines for
24 people who are incredibly disrespectful of our
25 neighborhoods.

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And so how are we doing on this pilot? Are we finally ready to-- to acknowledge its success? Its efficacy or lack thereof? And what are the plans for expansion?

DEPUTY COMMISSIONER SLIFKA: Thank you very much for the question. We really are pleased with the noise camera pilot program. This all began during the pandemic, or at least we saw our roads being overtaken by a lot of drag racing, loud-- loud mufflers, and it was very difficult to be able to deploy personnel in all of these locations simultaneously. It was frustrating to us. It was frustrating to NYPD.

And we read about a program that was successful in London. So what we did is we sent over for one of their pieces of equipment so that we could pilot it here in New York City. We are extremely pleased with the level of precision of the microphones that are associated with the cameras. They're directionally oriented so that you can really pinpoint and discern which is the vehicle that's creating the noise. That's not in all cases. In some cases, it is not easily discernible. We don't feel like that would

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2 hold up in court. But we are pursuing quite a large
3 volume of these associated just with the one camera.

4 So, we had about 250 summons that were issued so
5 far. We have about another 100 that are pending.

6 And I was reporting earlier that we have nine cameras
7 in total that were purchased. And we just finished
8 installing seven of them. So the other two will
9 happen in the next couple of weeks.

10 COUNCILMEMBER RESTLER: But none in District 33?

11 DEPUTY COMMISSIONER SLIFKA: I have to check. We
12 have not excluded you purposefully. I honestly would
13 have to check, but we are taking--

14 COUNCILMEMBER RESTLER: I'm glad that you haven't
15 purposefully excluded me. But I hope that you
16 prioritize our district because downtown Brooklyn has
17 a phenomenal amount of noise. And we could use some
18 attention, especially by the entrances to the
19 Brooklyn and Manhattan bridges, the levels of
20 honking, the noise of the cars. It's extraordinary.
21 And there should be more attention there. And I
22 don't think-- I would love to see more PD enforcement
23 on this, but I don't think that that's the right
24 solution. I think that the cameras are a better
25 approach. I appreciate that you have nine cameras.

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2 Could we-- Are we in a position where we could
3 allocate capital dollars in this year's budget for
4 additional cameras in our district?

5 DEPUTY COMMISSIONER SLIFKA: It's hard for us--

6 COUNCILMEMBER RESTLER: How do we get you to say
7 yes?

8 DEPUTY COMMISSIONER SLIFKA: --to mix capital
9 money with our expense budgets, so that--

10 COUNCILMEMBER RESTLER: We purchase cameras with
11 the NYPD, Argus cameras, to-- in high crime areas in
12 our districts to try and make sure that our police
13 departments have the tools they need to be
14 successful. Why couldn't we do the same here?

15 DEPUTY COMMISSIONER SLIFKA: I'm very welcoming
16 of the idea. And if we could figure out a way to do
17 that, I would definitely support it.

18 COUNCILMEMBER RESTLER: I don't know that DEP
19 takes capital money from the Council. But if we
20 could identify an alternative agency that could be a
21 partner--

22 DEPUTY COMMISSIONER SLIFKA: Mm-hmm.

23 COUNCILMEMBER RESTLER: --so that we could
24 purchase cameras and place them in locations that we
25 jointly determine are most helpful, then we could

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2 help expedite that. Do you have any sense of what
3 the cost would be per camera?

4 DEPUTY COMMISSIONER SLIFKA: Yes. We were just
5 talking about that earlier, too. It's about \$35,000
6 per camera. And I will say that it-- they are paying
7 for themselves. So, they are a wonderful use of
8 technology. Again, we are not a profit driven
9 enterprise. We don't run on quotas or anything like
10 that. But given the quality of life disturbances
11 that this creates, I believe it is a very effective
12 enforcement tool.

13 COUNCILMEMBER RESTLER: Okay. I would really
14 like to follow up you, Deputy Commissioner, about how
15 we can be ready in this upcoming budget to allocate
16 additional capital money to bring additional cameras
17 to our district. So, we'd like to start those
18 conversations quickly. And then just lastly, as
19 Chair Gennaro gives me the hook: In light of the
20 passage of the SLEEP Act, the New York SLEEP Act up
21 in Albany this year, that went into effect-- or last
22 year, that went into effect in April, enforcing
23 decibel limits and raising funds for illegal muffler
24 modifications, has there been any additional DEP
25 enforcement or any ways that we can demonstrate that

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2 we've been able to execute on the efficacy of this
3 law?

4 DEPUTY COMMISSIONER SLIFKA: I'll let Alyssa
5 handle that because we want to differentiate between
6 the vehicle traffic law and the enforcement of the
7 DEP's noise code.

8 DEPUTY COMMISSIONER CASTELLI: I'll just add that
9 the penalty is \$800 now, which we were able to do as
10 a result of the SLEEP Act in March of 2022. Before
11 that, it was around \$250. So that did give us the
12 authority to be able to increase that penalty. We
13 referred to the VTL to set the sound limit that we
14 use for the camera. But the authority for us to
15 implement the program is purely within the New York
16 City noise code.

17 COUNCILMEMBER RESTLER: Great.

18 And so I look forward to working with you on
19 capital allocations this year. We will figure out
20 however we can make that happen. We would very much
21 like to see an increased presence of these cameras
22 around our district. And I imagine many of my
23 colleagues would want to do the same. Thank you.

24 CHAIRPERSON GENNARO: Thank you, Councilmember
25 Restler. And we have no more questions for the

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2 panel. We really appreciate your, you know, being
3 here. And it seems like the message kind of sunk in.
4 And we are appreciative of that. We look forward to
5 the work, you know, coming ahead, that we can, you
6 know, work on this with the noise, and also the
7 civilian with the idling, which we're not talking
8 about today, but we do very much look forward to
9 that. Always a pleasure to see you and thanks very
10 much for your good testimony, and-- yeah. Thank you.
11 And with that we have our first panel. If the
12 Counsel could call them the first panel?

13 Just one second.

14 Okay, we have a first panel of Andrew Rigie, Max
15 Bookman, and Robert Bookman, all testifying on behalf
16 of the New York Hospitality Alliance. where you can
17 work with

18 Okay, am I going to call upon Counsel to swear in
19 this-- swear in the panel.

20 Thank you.

21 Okay, Sergeant, normally we set it a two-- this
22 is, like, a juicy topic. We're going to go to three
23 minutes to give people a chance to say what they have
24 to say. Even though it's-- that means I don't have
25 dinner tonight. No loss there.

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MR. RIGIE: I can't say my name in two minutes.

CHAIRPERSON GENNARO: Now that said, people don't
have to take up three minutes if they... you know.

Okay. Yeah, we just swear in the administration,
those folks. So please proceed with your good
testimony. And we appreciate you being here.

MR. RIGIE: Excellent. Thank you, Mr. Chair,
Councilmembers, committee staff. My name is Andrew
Rigie. I am the Executive Director of the New York
City Hospitality Alliance. We are a not-for-profit
association that represents thousands of bars and
restaurants across the five boroughs. So first, I
want to thank you, both Chair, Councilmember, for
introducing legislation that will put an end to the
unacceptable abuse that far too many bars and
restaurants have been subjected to by a tiny group of
self-interested, private bounty hunters.

These bounty hunters are not your average
citizens. They have turned profiting into the-- off
the backs of small business owners into an
opportunity. They wake up. They go across the city
to different neighborhoods, and they target small
businesses. Worse, they're relying on an incorrect
reading of the law to do it, as was recently

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2 recognized by OATH's appeal unit, which was
3 referenced earlier. They repeat this process over
4 and over again enriching themselves in significant
5 sums.

6 This is not how New York City should do sound
7 enforcement. In a moment you're going to hear from
8 the alliance's counsel, both Robert and Max Bookman.
9 They'll speak a bit about the history of sound
10 enforcement, and the correct law that governs here,
11 as well as some comments on these specific bills.

12 But first, I'd like to say Councilmember Holden's
13 bill will clarify that the correct statute for
14 policing commercial sound violations is the one that
15 has been on the book for nearly two decades, and
16 which you're very familiar with, the one that
17 provides objective criteria based on a decibel
18 reading. It would send a stark message to the bounty
19 hunters victimizing bars and restaurants that the
20 section of the law they are currently using to go
21 after small businesses is off limits.

22 Second, for those who may not get the message,
23 Councilmember Gennaro's bill would cap the amount of
24 money bounty hunters could collect from initiating
25 these summonses. But after listening to DEP's very

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3 thoughtful commentary on this matter, it seems that
4 the best idea may just get rid of the section
5 entirely of the noise code that permits civilian
6 complaints, and these bounty hunters to go around and
7 exploit small businesses, because of the degree to
8 which they're doing it, and some of the really
9 incredibly horrible techniques they are using.

10 There were some comments we had about limiting
11 the ability of a citizen to live within 200 feet of a
12 business, to be permitted to issue these violations.
13 But perhaps the idea is just get rid of that section
14 in its entirety.

15 But also, we want to make sure that the thousands
16 and thousands of these summonses that are currently
17 pending are tossed out as well. So, we'd love to see
18 a provision that not only applies moving forward in
19 the future once a law is enacted, but also to ensure
20 that all the summonses that are pending are tossed
21 out.

22 So, for these reasons, the Hospitality Alliance
23 strongly supports these efforts. And you'll hear
24 from my colleagues at the Hospitality Alliance in
25 more specificity. But I want to thank you for your
time and your effort to address these issues. If

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2 anything, you both know that we need to support our
3 small businesses. And what's happening here just
4 send absolutely the wrong message to not only our
5 small business owners, workers--

6 CHAIRPERSON GENNARO: Thank you Anthony. I've
7 got to move forward. The way I want to do this is--
8 I do-- I just want to pose a question. You made
9 reference in your statement to Mr. Bookman, that was--
10 - who was going to give us some legal commentary.
11 Let me put that in the form of a question: Mr.
12 Bookman, if you would opine with your-- with your
13 very substantial, you know, legal background going
14 back-- you were part of this 20 years ago.

15 MR. R. BOOKMAN: Yes, I was.

16 CHAIRPERSON GENNARO: And so if you just take us
17 from 20 years to now, give us some legal commentary
18 on what you saw play out before us today.

19 MR. R. BOOKMAN: Sure. My name is Robert
20 Bookman. I'm counsel to the New York City
21 Hospitality Alliance, but I'm also a partner in the
22 small Manhattan law firm, Pesetsky & Bookman, and we
23 specialize in representing small businesses and have
24 been doing so for 35 years now.

25

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So you're correct. About 20-some-odd years ago, you and I were both involved with the once-in-a-generation change of the noise code. And you did an excellent job as Chair of the Committee at that point, bringing in all the stakeholders that were going to be impacted by this new noise code. As you said before, there was construction, there was garbage collection, cars. One of the last sections-- Actually one of the last things that remained was the hospitality industry commercial noise. There had been on the books for a long time what was called an unreasonable noise standard. It meant, as Councilman Holden said, anything anybody wanted it to mean. So it meant everything and it meant nothing. And businesses were complaining that the default violation from the NYPD when they went to a place was to issue an unreasonable noise summons. It invariably required you to hire a lawyer, they all got dismissed, but that would be used against you when your liquor license was up for renewal that you had these violations. And we brought that to your attention. And we had one specific request, and that is that there be an objective standard for the measurement of sound emanating from a commercial

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2 establishment. It didn't seem complicated noise is

3 one of the things that in fact can be measured.

4 And thanks to you, you told the Administration,

5 Mayor Bloomberg, and the Chairman Emily Lloyd--

6 CHAIRPERSON GENNARO: Lloyd. Yeah.

7 MR. R. BOOKMAN: --at the time that unless that

8 issue was resolved, you're not passing a noise code.

9 And if you recall, it was the end of a session, and

10 if they didn't pass it in December, they would have

11 to start all over again. She went to-- Emily Lloyd,

12 the Commissioner, went to the Mayor, and explained

13 the problem. And as it is now well known in

14 folklore, Mayor Bloomberg, who was a techie kind of

15 person in his in his day said, "So what's the

16 problem?" And she said, "Well, if there's an

17 objective standard, every police department and DEP

18 will have to have a handheld noise meter." And he's

19 said, "So go buy them." And that resolved it. And

20 the-- We passed a specific criteria that, as you

21 recall, which requires a certain amount of decibels

22 above ambient during the day, a different one, you

23 know, a lesser standard at night when people are

24 entitled to more quiet.

25

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2 And we've lived happily ever after, for the last
3 20 years, where we have not had these unreasonable
4 noise violations. But businesses know with a couple
5 hundred dollars, they can-- they can buy these
6 handheld meters, and they measure themselves pursuant
7 to the law when their sound is leaking from inside,
8 which it often does when you're playing background
9 music for patrons, you have windows and doors open,
10 but they can measure it for themselves. That's the
11 standard-- [bell rings]

12 CHAIRPERSON GENNARO: I was going to say that
13 because I'm the Chairman, I'm not-- I'm not subject
14 to the clock in terms of the answers.

15 MR. R. BOOKMAN: And that's been the standard
16 objective criteria (not subjectivity) for 20 years
17 now until these bounty hunters found a 1972 section
18 of the noise code that I am embarrassed to admit I
19 did not know existed. I'm not sure you did, either,
20 which--

21 CHAIRPERSON GENNARO: Nor did the Bloomberg
22 administration in 2003 either.

23 MR. R. BOOKMAN: No. Nor did the Bloomberg
24 Administration, nor did the Commissioner, Emily
25 Lloyd, which apparently was put in before there was a

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2 311, before Community Boards were even really being
3 established, where people didn't have a way to
4 complain about noise. So this sec-- this was put in
5 there that if you had an-- if you were a true citizen
6 and wanted to complain about, you know, somebody's
7 downstairs from, you know, or around the corner on,
8 you know, on a commercial strip, you know, in Queens,
9 or in a building underneath, there was a mechanism to
10 do it.

11 No one knew it existed because it was virtually
12 never used, until these bounty hunters decided to
13 abuse the system.

14 And to answer the second part of your legal
15 question, they were abusing it in an improper way,
16 because they are citing the section of the law, which
17 we clarified-- or at least we thought we clarified.
18 But I think we need Councilman Holden's bill to make
19 it crystal clear and black and white, that what we
20 meant, and what has been happening for the last 20
21 years, be the law for the next 20 years. And that is
22 a specific objective-- a specific objective criteria.

23 So that solves that problem. But it doesn't
24 solve the bounty hunter problem, which is new to me.
25 As matter of fact, the first time we started hearing

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2 about this last November, we quite frankly, thought

3 it was a scam that somebody was trying to collect

4 money from a restaurant, because it had no name on it

5 had DEP crossed out. It had some POBox. So we told

6 people to ignore it. Then when we started to get a

7 lot of them, we went to DEP, and they said, "Yeah.

8 No. It's a subsection of law that nobody knew about.

9 And there are these guys issuing tons of them."

10 So that's the-- you know, that's the-- the noise

11 code issue. And the citizen complaint history, legal

12 history, how we got to where we are today.

13 CHAIRPERSON GENNARO: Okay. Let me get to my

14 next question.

15 MR. R. BOOKMAN: Sure.

16 CHAIRPERSON GENNARO: And, you know, thank you

17 for your indulgence in keeping you up here, but we've

18 worked on this stuff a long time.

19 And now, with regard to the OATH appeal of July

20 27th, the-- you know, I, as a non-lawyer, and the

21 Counsel to the Committee, you know, seems convinced

22 that this kind of rules out, you know, 24-244 B as--

23 as an applicable section of the code to be used as a

24 bounty hunters are using it.

25

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Do you believe that this-- that this appeal is,
you know, very dispositive of that of that legal
fact?

MR. R. BOOKMAN: I do. And I do want to say that
I was very impressed with DEP's testimony here today,
how they are in complete support of Councilman
Holden's bill. They provide-- provided plenty of
support, you know, for your bill. I'm frankly
shocked that the situation is even as bad-- it's
worse than I thought it was, where only six people
have filed these citizens' complaints and two of them
have 90% of them, and only six have filed more than
one. It's really, really a bad situation.

So if they felt that they were constrained by
this 1972 law, which allowed for bounty hunter
complaints before this appellate decision, and I
disagree with them about to what extent they are an
adjudicator under this law. It's true when DEP
issues that summons, or consumer affairs, or any
other agency, they are-- they are the plaintiff, but
this law provides for-- is something different. And
so this law did not allow for, quote, "citizens," and
I put it in quotes, because I don't even know if

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2 these two people are citizens of the city of New
3 York.

4 CHAIRPERSON GENNARO: That's why I call them
5 "civilian." That's why I preferred-- That is why I
6 prefer the term "civilian."

7 MR. R. BOOKMAN: I don't even know where they
8 live. They could live in Long Island as far as I
9 know, and just, you know, making a living here in New
10 York. But it gives the agency three options. They
11 can't just go right to OATH, you know, and submit a
12 violation. It created a different process. And that
13 process is: DEP has three options. They could say,
14 "Hey, this is a really good violation based on the
15 amount of evidence we see. We're going to take it
16 over as-- as the as the petitioner in the normal
17 course of a violation." Or, "You know, we think it's
18 a little bit weak, but you-- you citizen bounty
19 hunter could proceed with it on your own, if-- you
20 know, if you want." But the third option, which they
21 kind of ignored until you asked them, the question
22 was: They could dismiss it right out by finding that
23 it's frivolous or duplicitous.

24 So the law does require them to have a judicial
25 role here, basically. You know, because it's

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2 different. It's-- it's somebody sending in a
3 violation. And they should use that judicial role
4 judiciously. And they certainly, before July, were
5 not, because we now hear that 6000 of these went to--
6 went to OATH, which is an outrageous number. Now
7 comes this decision of-- of July 30, whatever.

8 CHAIRPERSON GENNARO: Yeah.

9 MR. R. BOOKMAN: I'm kind of disappointed that
10 DEP-- that OATH felt constrained not to be able to
11 answer any of your questions today. But if you read
12 that appellate decision, they are basically reaching
13 out to DEP and to the Council to do something about
14 these thousands of violations. It's their Supreme
15 Court, and it is binding upon their other ALJ's and--
16 and Max will speak to whether the ALJ's are-- are
17 informed about this--

18 CHAIRPERSON GENNARO: If I asked him. If I ask
19 him to, he will.

20 MR. R. BOOKMAN: --decision, because he has
21 appeared on these violations since then. But this
22 appellate decision is very clear cut, it gives DEP
23 all the ammunition that it possibly needs. And let
24 me read the-- what we call the holding in the law,
25

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2 you know, where the court says, "Okay, here's the
3 facts, and here's our legal decision."

4 It says, quote, "Where music contributes to the
5 atmosphere of a dining establishment or store, and is
6 directed to the patrons or shoppers therein, even
7 though it may also be incidentally heard by
8 passersby, an advertising purpose is not established.

9 And that section of the law that these bounty
10 hunters are writing in under is a section that talks
11 about commercial advertising--

12 CHAIRPERSON GENNARO: Right.

13 MR. R. BOOKMAN: --the old Canal Street, you
14 know, hawkers where they're standing out there with a
15 microphone or a megaphone. That's commercial
16 advertising. OATH is saying here that restaurants,
17 stores, bars that are playing music for the enjoyment
18 of their patrons, even outdoor patrons (because that--
19 - this appeals case, by the way, the speakers were
20 out to outside, but they were facing their out--
21 licensed outdoor dining area. Even in that case,
22 OATH is saying, "Wrong section of the law."

23 So DEP can tomorrow, and should tomorrow, review
24 all the violations that have not been fully
25 adjudicated yet (and there may be thousands of them),

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2 all the ones where there were defaults, because they
3 could all be reopened as we heard today, and apply
4 this new standard, where the court has made clear
5 that that's not a commercial advertising purpose, and
6 therefore get rid of a whole bunch of these before
7 you guys even pass a law to limit, you know, the
8 bounty hunters.

9 CHAIRPERSON GENNARO: Now, in order to do that,
10 if there are indeed thousands, you know, DEP--
11 although I did bring up the resource question. It's
12 just like, okay, we have to suddenly pour through
13 thousands of them. And, you know, how are we
14 supposed to do that, like, on...? And I, you know,
15 you heard what I said. But I--

16 MR. R. BOOKMAN: You said, "Nice try."

17 MR. R. BOOKMAN: Yeah, but there-- you know,
18 there are resources that-- that you know, in all
19 candor, there-- there are resources that would have
20 to be applied to do that. But as I also said that
21 they have not only the right, but they have the
22 obligation. That's because the workload is-- is a
23 lot is not an excuse for not doing it.

24 MR. R. BOOKMAN: Correct. And once they start
25 dismissing all these as-- as Councilman Holden, I

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2 think said, the volume is going to go way down,
3 because these guys are only in it for the money. And
4 if they're not going to get the money, then-- then,
5 you know, yes, initially there may be thousands. But
6 in two months from now, there may be hundreds and two
7 months after that they may only be dozens.

8 CHAIRPERSON GENNARO: Right.

9 MR. R. BOOKMAN: But they'll do something else to
10 make a living.

11 Also, you know, DEP is not completely an innocent
12 bystander here. They got to put in the work, but
13 they're also getting a cut of the action here by not
14 doing the work. And you know, they don't have clean
15 hands.

16 CHAIRPERSON GENNARO: Or the City-- the City is
17 getting money.

18 MR. R. BOOKMAN: Well, it goes into their monthly
19 report or annual report about fines that have been
20 collected. And this is a-- this is an easy, cheap
21 way for them to collect fines, because they don't
22 have to do any work. They just say, "Okay, you
23 bounty hunter, you prosecute the case." They don't
24 have to put in any-- any of their inspector time, any
25 of their attorney time. You know, maybe OATH will,

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2 will lend them a couple of ALJ's to go through some
3 of these.

4 Also understand that DEP has a citizen complaint
5 noise form that goes with the citizen complaints, and
6 it is wholly lacking in requiring the citizens to put
7 in sufficient information for the DEP's to make a
8 determination. It doesn't ask what is-- a simple
9 question: "What is the commercial advertising
10 purpose that you are-- that this noise was
11 complaining about?"

12 CHAIRPERSON GENNARO: Oh. You're saying that the
13 form should properly reflect the section of the code
14 that people are...?

15 MR. R. BOOKMAN: And this appellate decision.
16 And there were other court cases going back 20 some-
17 odd years ago, which talked about this. If this is
18 all they're-- they're looking at, of course, they're
19 passing all these along, because they're not asking
20 enough questions from the-- from the bounty hunter.

21 CHAIRPERSON GENNARO: [TO COUNSEL:] Do we have
22 that? Do we have that form? Okay. [TO PANEL:] I
23 mean-- the Sergeant will-- you don't mind giving us
24 that. So, Sergeant, when they when they leave the
25

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2 dais, I want that for the record of the-- of the
3 Committee.

4 And if I could, just to move things along-- just
5 you just move things along, I'd like to ask Mr. Max
6 Bookman, if you have anything to add what Robert had
7 to say.

8 MR. M. BOOKMAN: Yes. Thank you.

9 CHAIRPERSON GENNARO: You want to speak right
10 into the microphone--

11 MR. M. BOOKMAN: Of course.

12 CHAIRPERSON GENNARO: --with the red line on.

13 MR. M. BOOKMAN: Thank you, Chair. And thank
14 you, Councilmember Holden and committee staff. My
15 name is Max Bookman. I'm a partner at the law firm,
16 Pesetsky & Bookman. And for the past eight years,
17 I've been representing small businesses before OATH.

18 No small business should have to go through the
19 time and expense of hiring me to defend them at OATH
20 for this type of violation. The abuse of these
21 summonses: It's not delivering justice, it's
22 creating injustice, along with wasted time and money.

23 Chair, you said to DEP you wanted to decouple the
24 idling violations and the citizen complaints for
25 those from the noise violations. You said we have a

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2 fire, we have an emergency going on with the noise
3 violations. So what I'd like to do is I'd like to
4 give you a report from the trenches in OATH, where I
5 practice, and give you three of the aggressive
6 tactics that these incredibly small number of
7 individuals are using to misuse our city's summons
8 apparatus.

9 One is that they're ignoring OATH precedent. The
10 appeals unit case that we've been talking about today
11 was issued on July 27. These citizens are still
12 prosecuting these cases. And when you go into the
13 hearing, the virtual hearing room with them, they're
14 not bringing up this appeals decision with the OATH
15 ALJs. You asked, Chair, whether the appeals unit
16 decisions are disseminated-- disseminated to the OATH
17 hearing officers to the ALJ as well. They're
18 supposed to be, but we've had many hearings where the
19 OATH hearing officers are unaware of this decision.
20 So, our clients are fortunate to have us. We're
21 aware of it. We bring it to their attention. But
22 not everybody has us, and not everybody is-- is
23 hiring a lawyer, or a lawyer who knows all this
24 background. And so if the hearing officer doesn't
25 know about the appeals decision, and if the citizen

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2 complainant is not bringing up the decision, it's
3 just going unmentioned.

4 So that's a major problem.

5 You know, in state court, there's a duty of
6 candor with the court. You have to be forthright
7 with the court about the legal arguments that you
8 make. There's the same expectation in OATH and it's
9 not happening there. So that's problem number one.

10 Number two: Not only are they ignoring the OATH
11 precedent, but they're issuing multiples of these
12 frivolous violations one day after the next. And I'm
13 glad to hear DEP talking about it, because it's
14 really a problem. So just to give a little more
15 color on that: These folks are coming unannounced.
16 They're not-- they have no badge to show, but they're
17 not-- once they do come unannounced, they're not
18 making themselves known. So they come day after day
19 in secret, recording businesses day after day,
20 issuing summonses day after day. We have one client
21 in OATH who got sent--

22 CHAIRPERSON GENNARO: But they don't serve them.
23 They don't serve-- the businesses don't serve them.

24 MR. M. BOOKMAN: Right. No. They take their
25 video, they go home, and then they submit the

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2 complaint form to DEP. So we had one client who got
3 seven of these in a 20-day period, and didn't get
4 summons number one in the mail, until, you know,
5 until after turns out summons number seven was
6 issued. So it's like there's a delay here. So they
7 come issue 1-2-3-4-5-6-7. And then, you know, 20
8 days later, 30 days later, you know, 60 days later
9 now in the mail, they get summons number one, then
10 the next day number two, 3-4-5-6-7.

11 So what legitimate purpose is this serving? You
12 know, DEP talked about education. There's no
13 legitimate purpose to this.

14 And lastly, the third, you know, aggressive
15 tactic that they're using is they're alleging
16 recidivism. And this is so dishonest. You know,
17 like many of your laws 24-244 B has higher penalties
18 for repeat offenders, which we call recidivists. But
19 you're not a first-time offender until you've been
20 found guilty of something. But it's not so with
21 these folks. When they go on their summons spree,
22 where they're issuing the summonses day after day,
23 when they come to the on the second day, and every
24 day thereafter, they're alleging recidivist repeat
25 offender fines in their complaints to DEP, which DEP

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2 then turns into a summons or DEP takes no action, and
3 the citizen gets to issue the summons.

4 So take my client who got the seven summonses in
5 20 days--

6 CHAIRPERSON GENNARO: Mr. Bookman, if I could
7 just jump in here for a second. I just wanted to see
8 who was remaining behind from the administration?
9 Who's-- Who's here from the administration to hear
10 their good testimony that we're-- Anybody here from
11 the administration? Going once? Going twice?

12 MR. RIGIE: That's a law we should pass. They've
13 got to stay until to the end of the hearing.

14 CHAIRPERSON GENNARO: If I could-- Andrew, can
15 you call Robert Patello, and indicate that, you know,
16 it is my expectation that the administration has to
17 have somebody in this room to hear this good
18 testimony. Just-- Just step outside and give him a
19 call. You got his number? Okay. Like, somebody's
20 got to be here like really quick, or I'm going to get
21 upset.

22 Okay. Please continue.

23 MR. M. BOOKMAN: Thank you, sir. So just to
24 finish the point. So you take my client who got the
25 seven summonses in a 20-day period. By the time that

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2 second summons came in the mail, they're already

3 being told that they are a repeat offender, when the

4 first summons they just got yesterday, and it hasn't

5 even been adjudicated yet. And this is particularly

6 insidious with these-- these citizen bounty hunters,

7 because the repeat offender fine, even just to

8 settle, even just to mail in a violation saying, "I

9 don't want to hire a lawyer. I don't want to take a

10 day out to do OATH. I'm just going to mail in the

11 fine." Even the mail in fine is significantly higher

12 for these repeat offenders summonses. So at minimum,

13 you know, I don't know why DEP is not policing that.

14 It's not in their form, you know? "Are you saying

15 this is a repeat offender? If so, state the date

16 that the summons was previously adjudicated, and, you

17 know, provide proof of that." But, you know, we need

18 to, you know, it's just another example of these

19 aggressive and dishonest tactics that--

20 CHAIRPERSON GENNARO: But- But-- But OATH is part

21 of this, because they are, you know, they're not

22 disseminating these appeals, and resolutions, and

23 they're, you know, levying fines for repeat offenders

24 when there has been no conviction or whatever you

25 call it, you know, no, no, substantiation. So you

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2 haven't had-- So, you know, to the extent that, you
3 know, you could give us-- or not like right now, but,
4 you know, prepare something for us that our legal
5 counsels can look at, and we would like to make an
6 overture to OATH about your good testimony and about,
7 like, what they're doing, and we want answers from
8 them.

9 MR. M. BOOKMAN: Thank you for that. Yeah. I
10 mean, there does need to be, I think, better
11 education of the judges at OATH. I mean, ultimately-
12 -

13 CHAIRPERSON GENNARO: We're going to handshake,
14 and then you're going to give me-- what you're--
15 you're going to summarize what you're saying, right?
16 Item one, item two, item three?

17 MR. M. BOOKMAN: Oh, yes. And that's what I'm
18 saying. They ought to be-- they ought to be--

19 CHAIRPERSON GENNARO: That's the right move to go
20 to OATH, right? I mean...

21 MR. M. BOOKMAN: Well, I mean, yes and no. I
22 mean, yes, the right move is to go to OATH.

23 CHAIRPERSON GENNARO: Well, I mean, you know
24 what? I'll ask my own lawyers that question.
25

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2 MR. RIGIE: It's a combination of both. But also
3 understand--

4 CHAIRPERSON GENNARO: But I-- Just for my own
5 edificatio--

6 MR. RIGIE: Yeah.

7 CHAIRPERSON GENNARO: -it would be--

8 MR. RIGIE: A lot of these small businesses,
9 they, you know, they are overwhelmed with just
10 running their business and trying to make a profit,
11 you know? They're their own HR department. They're-
12 - Many of them are immigrants.

13 CHAIRPERSON GENNARO: Just to follow this by the
14 rules, because there's going to be other witnesses,
15 and they're going to say that I gave you a lot time--

16 MR. RIGIE: All right. I'm just going to finish-
17 -

18 CHAIRPERSON GENNARO: So what I'm going to say
19 is-- So in answer to my question, you were in the
20 middle of a thought that was of interest to me.

21 MR. RIGIE: Let me just finish that thought.

22 CHAIRPERSON GENNARO: What's that?

23 MR. RIGIE: Let me just finish this thought,
24 right?

25

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2 CHAIRPERSON GENNARO: I'm just saying that I am--
3 I am asking you to finish your statement.

4 MR. RIGIE: Yeah, so--

5 CHAIRPERSON GENNARO: So this is being--
6 Everyone, this is being done in response to a
7 question by me. Go ahead.

8 MR. RIGIE: They get something from the
9 government. It has a fine that you could just mail
10 in. A lot of them just think, "That's what I'm
11 supposed to do. And I just mail in the fine." Even
12 if it's a recidivist fine. You know, they don't even
13 know this, sometimes that they can go down and defend
14 themselves.

15 And so OATH, you know, when these-- when these
16 people get these things in the mail, it has a mail in
17 fine amount, you know, right there on it. And so for
18 a lot of people, it's a cost of doing business in New
19 York City, is paying a certain amount of money to
20 city government, when you-- when you get violations.
21 It's always wrong. But it's especially wrong when
22 it's a citizen bounty hunter, and they're getting a
23 recidivist amount.

24 So, you know, it's not so easy just saying that
25 OATH should not institute the recidivist fine. That

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2 true if you went to a full hearing. Then the OATH

3 judge looks and says, "Well, you've never been

4 convicted of anything before--

5 CHAIRPERSON GENNARO: Oh, I see.

6 MR. RIGIE: --so it's a first-time violation."

7 But a good portion of these-- 59% are defaults,

8 another percentage are settlements where the person

9 just sends in the fine. Only a small percentage are

10 actually going to a hearing.

11 CHAIRPERSON GENNARO: I see. I see. Okay.

12 That-- yeah, we-- I-- we had great collaboration 20

13 years ago. And let's, you know-- I appreciate your

14 advocacy on behalf of thousands of small businesses

15 that are-- that are being set upon in a most unjust

16 way. And it is, you know. I as Chair on this

17 committee, and then the Council at large, you know,

18 stands for trying to do what we can as soon as

19 possible to right this wrong. And I appreciate your--

20 - um...

21 MR. RIGIE: Thank you. Thank you again. Thank

22 you for 20 years ago. Thank you for now. Thanks for

23 joining the battle, and Councilman Holden. I think

24 together, the two of you each have half of the coin

25 here, with which we could solve this problem.

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2 MR. R. BOOKMAN: And there's some business owners
3 here, I know, that had been victims of this that
4 would be good to hear from--

5 MR. RIGIE: Who would love to come and testify.
6 Some have to get back to work.

7 CHAIRPERSON GENNARO: You know what? My col-- My
8 colleague, Bob Holden, has a question for the panel.
9 I recognize Councilmember Holden for questions.

10 COUNCILMEMBER HOLDEN: Thank you Chair. And--
11 and just-- I guess this is for Max, because you
12 mentioned that some businesses were targeted multiple
13 times, and they are repeat offenders. What are we
14 talking about in the way of fines that they're--?
15 Like, what kind of nightmare stories do you have one
16 business absorbing thousands of dollars worth?

17 MR. M. BOOKMAN: Yeah. I've got one client right
18 now, who was here earlier, but had to go back to
19 their business who is facing right now, because of
20 the total number of these citizens issue summonses
21 they've gotten, over \$12,000 in fines. You know, 50%
22 of that goes to a citizen. So that's just-- that's
23 the citizen.

24 COUNCILMEMBER HOLDEN: Yeah. And so this is
25 coming on top of the pandemic, where all these

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2 especially-- I mean, I had a barber shop that was--
3 He didn't have like these little six feet markers on
4 the floor, and he got hit with thousands of dollars'
5 worth of fines. He said, "I only had one customer at
6 a time. I'd make an appointment. And so I never had
7 more than one person in my store. And I had to pay
8 \$1000." And we couldn't, you know, again, OATH, they
9 find him, and we couldn't do anything about it.

10 And this is-- so, this is egregious. It's
11 particularly egregious, when, on top of the pandemic
12 and all the restrictions, we had to close, to shut
13 down, to only operate, you know, outside, whatever it
14 was that the business had to put up with, and then
15 they have this now.

16 And that's why I think we have to fix things that
17 are unfair. God knows government's unfair,
18 bureaucracy is unfair many times, and this is why
19 things fall through the cracks. So I thank you for
20 your-- for your testimony. I'd like to see even fine
21 tuning this further, where we get the businesses an
22 even shake here. And I'm not what-- you know, again,
23 I have businesses that cause problems in the
24 neighborhood. So, we understand that, but they need
25 some kind of measurement. And they need to know when

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2 they're breaking the law. And not some subjective
3 and arbitrary person.

4 MR. RIGIE: Correct. And the last thing I want
5 to say in response to you, I think most important
6 part of the DEP testimony, which was surprising to me
7 is they are saying that there is no court, there is--
8 that these places that are getting these-- bounty
9 hunters are not places that are getting 311
10 complaints for noise. So this, you know, it's one
11 thing if these are, you know, are trouble locations
12 and problem locations in the neighborhood, you know,
13 where there's a hundred 311 complaints. This is just
14 people, according to their map, they're walking
15 around just wherever they can hear a sound system
16 they're giving a violation, even though nobody's
17 complaining about it. It's outrageous.

18 COUNCILMEMBER HOLDEN: Thank you, Chair.

19 MR. RIGIE: Thank you.

20 CHAIRPERSON GENNARO: Thank you. I want to thank
21 this panel for your advocacy on the part of the
22 business community, and your commitment to making a--
23 you know, to bring justice to the business community.
24 I appreciate it.

25

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2 COUNSEL: Next we have David Sheldon with the
3 South Street Seaport coalition, Katelyn Mooney with
4 The Independent, and Kathleen Reilly Irwin with the
5 New York State Restaurant Association.

6 You may begin when ready.

7 CHAIRPERSON GENNARO: Okay. I'd just like to ask
8 the witness and make sure they state their name for
9 the record. And I have the statement of the New York
10 State Restaurant Association, but in whatever order
11 you wish, just-- or you know, the-- the witness on my
12 left started, so why don't you start?

13 MS. MOONEY: Sure. My name is Katelyn Mooney.

14 Why don't you bring the mic right in front of
15 you, like I have it?

16 MS. MOONEY: Sure.

17 CHAIRPERSON GENNARO: Just move the whole thing.

18 Yeah, because it'll help other witnesses too.

19 MS. MOONEY: My name is Katelyn Mooney. I am the
20 General Manager at The Independent in Time Square on
21 40th Street between Seventh and Broadway. We
22 received two noise violations dated back from last
23 September. There's not any residential in our area.
24 It's all commercial. Also, we do not-- The tickets
25 stated that we had speakers facing the sidewalks. We

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2 do not. We have French doors that have speakers
3 inside where we play music, but not-- not outside,
4 not facing the sidewalk. So it's kind of just a
5 completely false statement.

6 CHAIRPERSON GENNARO: And I'll come back for
7 questions.

8 MS. MOONEY: Sure.

9 CHAIRPERSON GENNARO: Is that the extent to your
10 statement.

11 MS. MOONEY: Yeah.

12 CHAIRPERSON GENNARO: Okay. Brevity is a-- is a
13 blessing. So I appreciate that. Please. Please
14 commence.

15 MS. REILLY IRWIN: Good afternoon. My name is
16 Kathleen Reilly Irwin, and I'm the New York City
17 Government Affairs Manager for the New York State
18 Restaurant Association. We are also here to testify
19 in strong support of the interest under consideration
20 today to reform the noise ordinance and put an end to
21 the abuse of the civilian complaint system.

22 Under the current law, civilians are empowered
23 and incentivized to issue complaints regarding the
24 noise ordinance. And with no limits in place, you
25 have these career complainants who have abused the

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2 system by reporting the same establishments over and
3 over in quick succession and resulting in sometimes
4 thousands of dollars in fines for restaurant
5 operators.

6 We've received frantic and frustrated calls
7 throughout the summer into the fall. I got one
8 literally today right before this hearing. He said,
9 "I need to talk to you. We just got a violation. Is
10 this one of these two people who's issuing all the
11 fines?" I said, "Yes. You should fight it. It's
12 obviously bogus." Same exact thing. It said he had
13 speakers facing the sidewalk, except we don't have
14 those speakers.

15 So the abuse of the system has been incentivized
16 up until now by offering civilian complainants up to
17 50% of the fines collected if they're the ones who
18 actually bring the claim all the way through OATH,
19 with no limits in place on total dollar amount,
20 number of complaints that can be compensated or any
21 other type of limits. And that creates a situation
22 where these notorious noise enforcers are bragging in
23 the press about making a living off of frivolous
24 complaints.

25

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We've already discussed at length the decision in the appeals board, and it was also already read for the record. But I also would like to point out a little note that was put in the decision, saying that "the board further finds that whether there are patrons or shoppers currently in a dining establishment or store is not a material fact, as such dining establishment or store is not expected to turn on and off music being provided for ambiance as customers enter and leave." So that's one more of the sort of factors that the OATH appeal appeals board has already put in writing and should be used as precedent.

So, while those findings are encouraging, and we're glad to hear that the appeals board even reversed several past decisions based on the precedent, restaurants should not be dragged before OATH and forced to adjudicate their ambiance setting, however often these serial complainants would like. The incentive system must be re-engineered so that the noise ordinance is not able to be abused.

So, Intro 160 would add concrete decibel levels into the definition of unreasonable noise, and importantly it specifies that Section 24-244 of the

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3 Administrative Code which is the section being
4 abused, shall not apply to music originating from an
5 interior space in connection with the operation of
6 any commercial establishment or enterprise (quoted
7 from the language).

8 So, if this legislation is enacted, it would
9 strongly curtail the complaint activity that has been
10 so burdensome for restaurants.

11 1194 would work to revamp the incentives and cap
12 the dollar amount that a civilian can receive for
13 reporting the noise ordinance to either \$5 or \$10,
14 which is also a much needed reform to put an end to
15 this current system of abuse and frivolously
16 harassing businesses.

17 Thank you so much for considering our feedback
18 and for bringing these two very important pieces of
19 legislation.

20 CHAIRPERSON GENNARO: Thank you for coming
21 forward with your good testimony. I certainly wish
22 you well in fighting your thing about the speakers.
23 I urge you to do that. And, Kathleen, I salute you
24 and your support of restauranteurs in your capacity
25 with the New York State Restaurant Association.
Thank you for your good testimony.

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2 I just want to-- Sergeant? Sergeant, can I see
3 for a second? Okay, just call the next panel.

4 COUNSEL: Our next panel will be Michael Jacobs
5 with Corner Table Restaurants, Vanessa Oré with
6 Romantic Depot Queens, and Brittney Mayorga with
7 Romantic Depot.

8 You may begin when ready.

9 CHAIRPERSON GENNARO: You've got to put the
10 microphone on.

11 MS. ORÉ: Okay, thank you. Good afternoon,
12 everyone. I'm Vanessa Oré, and I serve as the
13 General Manager of Romantic Depot, a distinctive
14 novelty and lingerie store located in the vibrant
15 neighborhood of Sunnyside, Queens. Our store stands
16 alone at 4702 Queens Boulevard. It's important to
17 understand that our location is unique. We have no
18 neighboring buildings, no upstairs or next door
19 neighbors. Our storefront faces an eight-lane
20 stretch of Queens Boulevard, bustling with traffic,
21 divided by the elevated M train. The nature of our
22 surroundings naturally make it a noisy environment.
23 In 2022 and ordinary white envelopes arrived at our
24 store mysteriously delivered by the US Postal
25 Service. To our surprise it contain what appeared to

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2 be four or five counterfeit summonses. These
3 documents were not issued by a police officer or any
4 authorized city inspector. Rather, they bore the
5 signature of the individual residing a few blocks
6 away. The summons incited alleged violations related
7 to music for business or commercial purposes. It's
8 important to clarify that we've never utilized our
9 music for commercial advertising. Our music has
10 always been intended for the enjoyment of our
11 customers and employees.

12 Devoid of promotional content or sales
13 announcements, we have consistently been
14 conscientious about keeping the volume at an
15 appropriate level and avoiding late-night
16 disturbances.

17 Initially we regarded these tickets as a prank or
18 novelty summons available for purchase online to
19 place on someone's car windshield. We even conducted
20 online research to verify whether civilians could
21 indeed issue summonses for noise violations.

22 Surprisingly, there was a complete absence of
23 information confirming the legitimacy of these
24 tickets, especially before media coverage and the
25

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involvement of local politicians shed light to the
issue.

To make matters more baffling, these summons
referred to violations from months earlier. Since we
believe the summonses were not genuine, we did not
respond to them. However, several months later, we
see an official notice from the DEP, stating that we
owed \$1,000 due to the failure to address the initial
summonses. Regrettably, by that point, we had
received at least 10 or 15 additional summonses, all
bearing the same charges and originating from the
same individual. We haven't received physical
tickets. It appeared that this individual Mr.
Detering, has been documenting instances of audible
music outside our store and stockpiling them before
delivering another wave of violations.

Consequently, quietly, we find ourselves facing
overwhelming sum of \$30,000 in fines. I humbly
request that you intervene and rectify this glaring
injustice.

CHAIRPERSON GENNARO: Thank you. Thank you.
I'll come back with comments after I get the next
witness.

MS. MAYORGA: Hello, good afternoon.

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2 CHAIRPERSON GENNARO: Oh, you got to turn the
3 light on, the red light, and speak right into the
4 microphone.

5 MS. MAYORGA: Gotcha. Good afternoon ladies and
6 gentlemen. My name is Brittany Mayorga, and I serve
7 as a supervisor at Romantic Depot, an establishment
8 conveniently located at the intersection of 47th
9 Street and Queens Boulevard.

10 As stated by my colleague, this section of Queens
11 Boulevard is exceptionally busy with vehicles and
12 trains passing by around the clock seven days a week.

13 Our business specializes in novelty items and
14 exquisite lingerie, and we are dedicated to creating
15 an enjoyable atmosphere are both our customers and
16 our dedicated staff. Part of that ambiance involves
17 background music. We have always been diligent in
18 ensuring that our music remains at an appropriate
19 volume. It's also worth noting that the sound from
20 our stores is genuinely confined to the immediate
21 vicinity, since we are the only people taking up that
22 block.

23 Upon discovering that the tickets that were
24 initially believed to be fraudulent were indeed
25 legitimate, and that a program existed to monetize

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2 them through reporting, I was truly astonished. I
3 was even more taken aback when I learned that these
4 citations were not for excessively loud music, but
5 simply for being audible outside our store.

6 It seems improbable that the music we play
7 intended for business and aesthetic purposes could be
8 categorized as a violation of commercial noise
9 regulations.

10 What's most distressing is while this program may
11 have been established with good intentions, it is
12 evidently having the opposite effect. When a
13 business exceeds noise levels, common sense dictates
14 that an appropriate authority should issue a warning
15 and offer an opportunity for correction. However,
16 instead of this reasonable approach, it appears that
17 individuals who benefit from issuing these tickets
18 choose to accumulate them and serve multiple
19 citations simultaneously, primarily driven by
20 financial gain. I genuinely appreciate my role and
21 the excellent relationships I share with my coworkers
22 who, like me, are all striving to make better lives
23 for ourselves and our families. We all work hard and
24 is deeply unfortunate that a handful of individuals

25

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2 can manipulate a well-intentioned but poorly executed
3 law for their personal gain.

4 I wish to express my gratitude to our local
5 politicians and the Sunnyside Business Improvement
6 District for recognizing this issue. I implore the
7 entire City Council to rectify this abusive practice
8 and restore fairness and justice to our community.

9 CHAIRPERSON GENNARO: Well, thank you both for
10 coming forward and bearing witness to the problem
11 that we've been talking about all day. You know, the
12 more people that come and testify, you know, the more
13 it is-- You know, it's one thing to hear me say it.
14 It's another thing to hear people that are really
15 affected by it. And so I appreciate you coming
16 forward today with regard to-- The witness to-- to
17 my right about me, you know, intervening: Because
18 your fines are, you know, under adjudication I have
19 no-- I have no authority to do that. But I would
20 urge you to fight them. And-- And it would be--
21 throat lozenge. I've been talking all day, scratchy
22 voice. My view is to try-- and once we get the bills
23 passed into law, all those summonses that have not
24 been adjudicated-- you know, the ones that have been
25 adjudicated there is nothing anybody can do. But,

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2 but we do intend to move quickly. And to the extent
3 that we can have the violations that have been
4 written but not yet adjudicated, you know, go away,
5 that's a legal question. That would be my intention
6 to do that.

7 I want to thank you for coming forward. And I
8 appreciate you-- your patience for being here this
9 time, this-- this whole hearing. Thank you.

10 MS. ORÉ: Thank you for your time.

11 CHAIRPERSON GENNARO: Andrew, can I see you for a
12 second?

13 COUNSEL: Should I call the next panel?

14 CHAIRPERSON GENNARO: Yes, please.

15 COUNSEL: Next panel will be Jouel Kuperman from
16 the Environmental Justice Initiative, John Conroy
17 from Mustang Harry's, and Theresa Sigler from Pig N
18 Whistle.

19 MS. SIGLER: Hi there. My name is Theresa Sigler
20 and I represent the Pig N Whistle Group. I am the
21 manager over there. This past February we received a
22 ticket in the mail, like all the others have said,
23 you know from a very dodgy-looking envelope, not a
24 city agency. We immediately turned off our outdoor
25 speakers, which we did have on for the ambience of

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2 our outdoor diners, because they were the only ones
3 that we had during COVID. So the speakers were
4 turned on at that point for that. Quite frankly, we
5 just forgot to turn them off. Rockefeller Center is
6 a very noisy neighborhood. You could barely hear our
7 speakers, but as soon as we did, we adhered to the
8 law.

9 A couple of weeks later, we got another seven
10 tickets all predated from the previous August,
11 Christmas, what have you.

12 We have had two OATH hearings. The problem with
13 the OATH hearing for us is we had requested to appear
14 in person. Like I wanted to look that person in the
15 eye who was writing these tickets. But they're not
16 allowed. It's by telephone only. So that's one
17 issue we have. It allows the bounty hunters to, you
18 know, call in from home, call in from their office,
19 call in from-- even if they're out of the country.

20 OATH have sent us tickets that we have never even
21 received. The person from OATH, today said that it's
22 75 days. It's not it's 30. And there are businesses
23 who have not received either the ticket or the
24 hearing. And this states right here, that the city
25 will get a legal judgment if a new hearing is not

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2 requested, or the \$1750 paid within 30 days. So
3 that's also another issue that the businesses are
4 dealing with.

5 This gentleman here asked, well, you know, "What
6 would the defense be?" Yes, the defense absolutely
7 is I was unaware, I did not know, I immediately
8 ceased operation. The first DEP inspector that we
9 had on site was after we had received five tickets.
10 And I have been at that location for 10 years. And
11 in 10 years, we have never received a single noise
12 violation. So yes, that is-- would have been my
13 defense.

14 Okay, and those-- those are my comments.

15 CHAIRPERSON GENNARO: Thank you.

16 MS. SIGLER: Everything else, everybody has
17 already said. So I would not like to waste the time.

18 CHAIRPERSON GENNARO: Thank you. And I also
19 understand we have about 40 witnesses on Zoom. And
20 so, you know, brevity, as I said, is a blessing. I
21 thank you for that. And thank you for bearing
22 witness to the problem.

23 MS. SIGLER: Sure.

24 CHAIRPERSON GENNARO: Joel?
25

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3 MR. KUPFERMAN: Good afternoon, thank you. I'm a
4 little upset that there's all this talk about
5 protection of the small business people and abuse of
6 environmental law. I'm here partly to-- to defend
7 the citizen suit provision in general, and then here
8 in particular. DEP has a bad record of enforcement.
9 They have a bad record of enforcement. There's also-
10 - There's no coordination with Department of
11 Buildings and other city agencies. As an
12 environmental lawyer that has been dealing with noise
13 complaints, air pollution complaints, environmental
14 complaints, City enforcement is basically
15 nonexistent. Okay, that's the tenant that's out
16 there. I'm here probably not to protect the
17 restaurant owners. But all the other thousands and
18 hundreds of thousands of people that are suffering
19 from lack of air enforcement by DEP. I'm here to
20 protect the DEP enforcement people who were sent out
21 to Brownfield sites.

22 CHAIRPERSON GENNARO: We're not talking about
23 Brownfields or anything. Just please limit it to
24 noise. We're talking about noise.

25 MR. KUPFERMAN: Okay. I'm limiting it to noise.
With many, many construction sites, we've called up

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2 the DEP, we've asked them to send down inspectors,
3 they tell us they don't have the time to do it, and
4 the people in DEP have told us that it doesn't make
5 that much of a difference, because they're only going
6 to introduce a small fine, that doesn't get
7 collected. So I think it's without the outside
8 goading, without these private or public citizens, we
9 wouldn't have been having this hearing in a way, and
10 non-enforcement would be continuing. The City's owed
11 \$2 billion in uncollected fines.

12 So without this outside pressure in different
13 ways, this-- we're not being protected. The other
14 thing about noise protection. What you're asking is
15 unequal enforcement. When-- When NYCHA residents
16 call 311 to complain about noise, they're told they
17 have to go back to NYCHA. So we have a definitely--
18 Mr. Gennaro, you should look at the unequal
19 enforcement to the city, especially in terms of noise
20 enforcement. Okay? But also you can't have a bill
21 of attainder-- you can't do a bill undoing past
22 complaints. That's unconstitutional. That's called
23 a bill of attainder, all right? So I just want to--
24 I think it's-- it's a little stacked here that there
25 might be without going into the details.

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2 CHAIRPERSON GENNARO: Please conclude.

3 MR. KUPFERMAN: Excuse me?

4 CHAIRPERSON GENNARO: Please conclude.

5 MR. KUPFERMAN: Conclude?

6 CHAIRPERSON GENNARO: Yeah.

7 MR. KUPFERMAN: Well, I think one of the things
8 I'm going to ask, if you're so concerned about
9 restaurant owners and small businesses, which you're
10 expressing here, I think the City Council should look
11 at-- at commercial rent control is one way to--

12 CHAIRPERSON GENNARO: That's another topic.
13 That's-- that's out of order for this hearing.

14 MR. KUPFERMAN: Okay. But in terms of noise,
15 that you have to look at-- that DEP does not have
16 injunctive relief when there's a serious noise
17 violation that's going on at a construction site.
18 They can't stop that construction going on. We've
19 dealt with cases where there should be--

20 CHAIRPERSON GENNARO: Joel, your testimony is not
21 relevant to the hearing.

22 MR. KUPFERMAN: But just let me finish. Okay.
23 You gave the other people more than two minutes, Mr.
24 Gennaro.

25 CHAIRPERSON GENNARO: I'm just saying that--

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2 MR. KUPFERMAN: A lot more than two minutes. All
3 right. And I think it's really unfair that you allow
4 three people to speak for like 10-12 minutes, and you
5 don't let--

6 CHAIRPERSON GENNARO: That is the-- That is the
7 discretion of the Chair, and your off topic.

8 MR. KUPFERMAN: Well, I'm asking--

9 CHAIRPERSON GENNARO: You're not asking anything.
10 I get-- I'm just saying that you are-- you're off
11 topic. We have 40 more witnesses.

12 MR. KUPFERMAN: Well, I'm getting back on-- I'm--
13 I'm back on topic.

14 CHAIRPERSON GENNARO: Next panel. Next panel.
15 Your time-- Your time has expired. Next panel.

16 MR. KUPFERMAN: Okay, but the enforcement--

17 CHAIRPERSON GENNARO: Next. Panel.

18 MR. KUPFERMAN: But let me just--

19 CHAIRPERSON GENNARO: I'm calling the next panel.

20 MR. KUPFERMAN: Okay. I'm going to say--

21 CHAIRPERSON GENNARO: Sergeant. Turn off the
22 microphone. Next panel.

23 COUNSEL: The next panel will be Liam Malanachy
24 (I apologize if I mispronounce your name) with
25 Juniors, Mark Fox with Fox Lifestyle Hospitality

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2 Group, and Clint Smeltzer with Manhattan Community

3 Board 3.

4 CHAIRPERSON GENNARO: And while that panel gets
5 sell together, I have to take a two-minute break.
6 I'll be right back.

7 Okay, I'm back. Thank you. Yeah, please turn on
8 your microphone and speak right into it.

9 MR. MALANACHY: Thank you. Good afternoon,
10 Councilperson Gennaro and the rest of the Committee.
11 My name is Liam Malanachy. You did a great job. I
12 represent Junior's Cheesecake. And they have been
13 subject to-- I would love to tell you how many
14 summonses they have. What I can tell you is that
15 right now I'm representing them on a total of 13
16 summonses, which I beat out Mr. Bookman by a couple
17 of \$1,000. We now have somewhere around \$16,000
18 worth of outstanding summonses that we hope to have
19 adjudicated in one fell swoop sometime next year.

20 I say I can't tell you because we have just
21 gotten to new ones that allege violations back in
22 October of last year. So we have every reason to
23 believe that we're a very juicy target and that we
24 may be subject to more coming down the pipe. I won't
25 reiterate-- I won't go over-- The work you've done

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2 here is amazing. I'm very impressed by today's
3 hearing and by the testimony that's taken place so
4 far.

5 CHAIRPERSON GENNARO: Thank you.

6 MR. MALANACHY: It is clear that this type of
7 enforcement is not germane to quality-- to the
8 quality of life in New York City. Junior's
9 Cheesecake has been here for 73 years, has been in
10 the Time Square area for 20 years, and they've
11 received a grand total of zero noise complaints aside
12 from these most recent summonses. I can tell you
13 that I have represented a smaller business. A friend
14 of mine has a bodega. He would have never been able
15 to hire a lawyer. And we had a hearing back in May.
16 So as a report from the trenches, it was a-- it
17 resembled a kangaroo court to the extent that the
18 administrative law judge in question felt as though
19 they had no discretion whatsoever to mitigate any
20 fine based on remediation. We've heard that.

21 CHAIRPERSON GENNARO: Right.

22 MR. MALANACHY: He also felt as though once it
23 was audible from the street-- [bell rings]

24 CHAIRPERSON GENNARO: Yeah, that's you. But-- so
25 please conclude.

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2 MR. MALANACHY: Okay. So once it was audible
3 from the street, it was completely irrelevant. I'm a
4 former administrative law judge myself. Discretion
5 was the stock and trade of our business. I would
6 urge you to do one thing. If you're going to pass--
7 if' you're successful, which I hope that you are, is
8 considering making it retroactive. Contrary to what
9 Mr. Kupferman said, that would not be an ex post
10 facto law. That would merely be applying the same
11 justice--

12 CHAIRPERSON GENNARO: I know.

13 MR. MALANCHY: Okay, thank you.

14 CHAIRPERSON GENNARO: Thank you.

15 MR. MALANCHY: Okay.

16 MR. SMELTZER: Hi. My name is Clint Smeltzer,
17 and I'm here representing Committee Board 3,
18 Manhattan. I'm Chair of their State Liquor Authority
19 Licensing Committee. Our board hasn't voted on this
20 legislation. It's just been a discussion.

21 We're mainly concerned about Intro 160 and that
22 the changes would have a negative impact on our board
23 specifically. We've had the highest number of
24 commercial noise complaints in Manhattan, and the
25 second in the city total. Our complaints-- our noise

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2 complaints have increased significantly since 2019.

3 I think it's a 74% increase in 2023 from 2019. Our

4 area is densely residential, but there's also a lot

5 of non-conforming businesses on the side streets,

6 both nightlife businesses and other businesses. Our

7 job is to make sure the businesses and residents can

8 peacefully coexist. The protections that keep the

9 noise from businesses inside the business and not

10 spilling into the streets or nearby apartments and

11 allow people to sleep also allow different types of

12 businesses to coexist right next to each other.

13 Without these protections, we're putting the

14 residence-- reticent-- sorry, residences and

15 businesses unnecessarily in conflict with each other.

16 Many of our businesses are located in tenement

17 buildings which are almost impossible to soundproof.

18 So therefore, the sound emanating from there becomes

19 a huge problem for the residences above.

20 Basically, that's it. We were just asking that

21 the protections that have been put in place years ago

22 must be maintained and enforced in order to have this

23 balance between residents and businesses, and that

24 you keep the existing legislation and the existing

25 language of legislation in regards to the decibel

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2 levels and readings of sound emanating from inside of
3 business.

4 CHAIRPERSON GENNARO: Thank you. And certainly
5 we are going to you know work with a host of
6 stakeholders both on Intro 160, mine, and Keith
7 Powers' bills and make sure you touch base with--
8 well, if you were notified of this hearing, then, you
9 know, you're in our orbit, and we'll make sure that
10 we stay in touch as these bills, all of them, roll
11 down the tracks. Thank you very much for
12 participating today.

13 And as the next panel is called, I have to do-- I
14 have to take a special eye drop, and I just-- I'll
15 just take a second.

16 COUNSEL: Call the next panel?

17 CHAIRPERSON GENNARO: Yeah, call the panel.

18 COUNSEL: The next panel will be will be Lisa
19 Lesa Rozmarek with Nederlander Organization, Robert
20 Camacho with Bushwick Alliance I think, and Yoav
21 Erez.

22 CHAIRPERSON GENNARO: Okay, forgive me. I just
23 have to-- It's one of these things I've got to do it
24 every two hours. It's just an eyedrop, but it's like
25 fancy. I have to fill the little dropper. It's got

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2 to be refrigerated. It's like a whole thing you
3 know?

4 COUNSEL: You may begin when ready.

5 CHAIRPERSON GENNARO: That's it done. Thank you
6 for your indulgence.

7 MS. ROZMAREK: Good afternoon. My name is Lesa
8 Rozmarek. I'm the Director of Facilities for the
9 Nederlander Organization, a well-established and
10 respected business in Broadway theater and the
11 entertainment industry.

12 I'm here to share our experiences and concerns
13 regarding the enforcement of the ordinances under
14 review, and the impact they've had on our-- our
15 organization.

16 Since 1965, the family owned and operated
17 Nederlander Organization has been a proud contributor
18 to the vibrant cultural landscape of New York City.
19 We offer premier Broadway entertainment experiences
20 to our audiences and are strong supporters of our
21 local economy. Recently, our business has been
22 negatively impacted by a series of sound-related
23 violations that we believe require a more balanced
24 and equitable approach to enforcement.

25

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To date our organization has received (as of
yesterday or last week) a total of 28 violations
related to speakers mounted underneath our marquees
directly attached to our theatres, the majority of
which were issued during the summer and fall of 2022.

What is particularly troubling is that these
violations were issued without any prior warnings or
notifications. It is our belief that a fair and just
system should provide businesses with the opportunity
to rectify violations through education and
corrective actions, rather than resorting to
immediate punitive measures.

In our 58 years of business in Times Square
theater district, we have never received a citizens
complaint regarding noise from our theaters until a
bounty was placed upon businesses with no
restrictions. There's zero evidence to back up that
low level sound coming from theater marquees is
disruptive to Times Square. Moreover, in commercial
areas, such as Times Square, there was no expectation
of quietness, and these citizens have chosen to
target the theaters as a source of revenue by
traveling to this area to issue violations.

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3 Additionally, to the clarifications proposed
4 accompanying the violations, citizens should be
5 required to also submit noise level readings. This
6 has been common practice by the DEP to confirm if
7 there really is a violation. The fact that these
8 citizens have found a loophole where they must only
9 show that there was an audible noise is against
10 public policy in the spirit of the law. The videos
11 submitted are often in areas in Midtown where the
12 ambient noise levels are much higher than other areas
13 of the city and this is not considered when reviewing
14 the hearing. Furthermore, there should be measures
15 taken to establish--

16 CHAIRPERSON GENNARO: Please conclude. I'm
17 sorry, you know.

18 MS. ROZMAREK: We'd like to point out in our
19 experience that citizen complainers held on to a
20 stack of summonses for a significant amount of time
21 before mailing them via first class mail, and several
22 tickets were lost in the mail and never received. We
23 were made aware of the violations after they went
24 into default. So we do support the bills with the
25 additional-- additional clarifications and thank you.

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2 CHAIRPERSON GENNARO: Thank you very much for
3 your views and your patience. Yes, my friend.

4 MR. EREZ: Hi. My name is Yoav Erez, and I'm
5 here because I'm a concerned citizen, sick of being
6 the victim of illegal unregulated noise from
7 businesses. It has never before been easier to buy a
8 powerful speaker which is causing a noise pandemic in
9 the city. I literally cannot walk one block without
10 someone trying to force their DJ skills on my
11 unwilling ears. Restaurants should not be allowed to
12 pollute the public space with their music. It cannot
13 be more clear to any reasonable person that the
14 intention of the law when referring to advertising is
15 any sound heard outside of a business. Even if it's
16 just music, it doesn't matter how loud it is.

17 Literally 100 feet from here, there are food
18 carts and street merchants who blast music out to
19 public most days and nights. And even if there are
20 hundreds of 311 calls, they continue to make city
21 hall into an open air disco without any
22 interruptions.

23 The reality is there is currently zero noise
24 regulation enforcement in the city. Calls to 311 get
25

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2 a visit from the police sometimes, and only up to
3 eight hours later when the problem is often gone.

4 Even in cases where the crime is obvious, and the
5 police are there on time, they will never issue a
6 fine or confiscate a speaker. All they do is give a
7 meaningless warning and leave, and the issue
8 continues once they are gone.

9 Yes, there is a small number of people taking
10 advantage of the citizens complaint program right
11 now, because it is not advertised anywhere. New
12 Yorkers aren't even aware it exists, and it takes
13 hours of work, months of waiting around and hoping
14 and praying that the DEP will sometimes reply to your
15 emails. We are on a mission to protect New Yorkers
16 and their ears, and we should be compensated for it.

17 Because noise pollution is considered a smaller
18 crime that is easier for most people to ignore, who
19 you'll end up hearing from today are businesses who
20 instead of simply turning their music off, will
21 continue to advertise illegally with complete
22 disregard for peaceful, quiet, respectful New Yorkers
23 who live in their areas, because most New Yorkers are
24 nonconfrontational and don't even know that this
25 hearing is taking place or that they have this

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2 option. Even if they didn't know you wouldn't hear
3 from them because all you're here for is squeaky
4 wheels that are losing money.

5 Thank you. Thank you for your time.

6 CHAIRPERSON GENNARO: Thank you.

7 MR. CAMACHO: Hi. Hi, how are you? My name is
8 Robert Camacho. I live in the hood of Bushwick.
9 When nobody wanted to be there. All of a sudden,
10 everybody wants to come there and be like Christopher
11 Columbus syndrome and throw the natives out. I'm
12 talking about that Intro 160, the noise code. Music
13 organizing from interior space-- space like
14 restaurants, bars, and now we got the weed shops.
15 Don't forget about that. Intro 1194 would cap the
16 fines of noise violations from \$5, which was
17 reported-- if you report it to DEP environment to
18 protection to \$10 if you report it by a citizen who
19 was sick and tired of being assaulted by the noise
20 for profit coming from neighborhoods like mine, and
21 businesses like theirs. The Sound Bar. It sounds--
22 It gets worse. The LU 00112-22 adopted by the
23 resolution 53, passed by City Council in 2020 allows
24 restaurants to keep their facility open at all times.
25 They are operating. Local law 121 passed by City

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2 Council in August mandates restaurants and bars must
3 be allowed to operate from 10am to 12pm, indoor and
4 Outdoor, even if it's a residential neighborhood.

5 Put it all together. Under these combined four
6 laws, restaurants can keep their doors open 14 hours
7 a day, blast music in the streets, and in homes by
8 nearby residents with no fear of a fine that is the
9 cost of a sandwich, which is absolutely not true.
10 I'm going to change the sandwich routine, because we
11 had a community space that was given to community
12 because they don't have no more CBOs. A private
13 entity got rid of the CBO and did a-- a supermarket.
14 Very well. We need supermarkets. So I went in
15 there. And I went to buy a sandwich. And do you
16 know I pay \$14.50 for a sandwich only with cheese
17 lettuce and tomatoes. More than that-- these people
18 would pay for fine. Please.

19 CHAIRPERSON GENNARO: Please conclude.

20 MR. CAMACHO: You've got to stop this. You gotta
21 listen to the community. I know I have both of my
22 Councilpeople here. Jennifer Gutiérrez and Sandy
23 Nurse, and we will be blasting it, because we're
24 dying. Our seniors and our kids can't live on top of
25

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2 these stores. And the covert-- our kids got to study
3 seven days a week.

4 CHAIRPERSON GENNARO: Your time has expired. I
5 have a comment--

6 MR. CAMACHO: Thank you, God bless you, and I
7 appreciate you.

8 CHAIRPERSON GENNARO: No, so-- but I--

9 MR. CAMACHO: Take care of yourself, because you
10 don't sound too good.

11 CHAIRPERSON GENNARO: I've got-- No. I've got
12 something to-- to add, is that-- You know, the
13 individual civilian, you know, sometimes feels a
14 little helpless. They call 311 or whatever. And
15 this is why, you know, you not only have your local
16 Councilmember, because you go to the Councilmember,
17 and you know, you go to he or she, and indicate, you
18 know, that you've got a problem. There's also the
19 local Community Board. You know, we do have these,
20 you know-- Councilmembers have the ability to get
21 local problems addressed. And that's like a large
22 part of what we do.

23 And there's 311 and there's like members of the
24 Council. And so, you know, most Councilmembers are
25 better than 311 at getting, you know, situations

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2 remedied. And that's what I do. And I think I speak
3 on behalf of, you know, the other 50 Councilmembers
4 here that when we hear specific situations, we do our
5 best, you know, to try to, you know, give-- give
6 people the, you know, peace and repose that they
7 need, and to address whatever problem they have.

8 And so we try to fill in where you know, 311
9 leaves off.

10 MR. EREZ: This is the opportunity. So, I've
11 never felt more helpless then until I came and saw
12 how one-sided--

13 CHAIRPERSON GENNARO: Okay.

14 MR. EREX: [inaudible]

15 CHAIRPERSON GENNARO: But I just had-- I just
16 wanted to have that as a-- as a parting comment. And
17 I appreciate this panel being here with us today.
18 Thank you very much.

19 MR. CAMACHO: And I thank you. And that citizen
20 thing needs to be fixed too. So, thank you.

21 CHAIRPERSON GENNARO: Thank you sir.

22 COUNSEL: The next panel will be Sandra
23 Telendrana (again, I apologize if I pronounce her
24 name wrong) with Flowers by Giorgie, Nikolay Gergov
25 with Pando 39, and Frank McCawley with Tito Murphys.

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2 Okay. Why don't we go from-- from my right to my
3 left? How about that? We'll start with you.

4 MS. TELENDRANA: Good afternoon. My name is
5 Sandra Telendrana. I stand before you today as the
6 voice of Flowers By Giorgie, a small family-owned
7 flower shop nestled in the heart of Sunnyside,
8 Queens.

9 Our shop has been marred by an unpleasant
10 encounter with Mr. Dietmar Detering, who in
11 conjunction with a DEP, unjustly slapped us with
12 three unwanted tickets. Two of these tickets found
13 themselves in the favor of Mr. Detering, each
14 carrying the weight of an \$880 fine, adding up to a
15 staggering \$1760.

16 Our luck ran out when the so-called bounty
17 hunters were instructed to document violations
18 themselves. The second ticket handed out by the DEP
19 cited unreasonable noise on the sound reproduction
20 device for commercial business advertising purposes,
21 on November 28, 2022, at 8:12am. This was despite
22 the fact that our doors remained open and the music
23 emanating from our shop was meant to create a
24 pleasant atmosphere inside, not to disturb our
25 neighbors. However, the DEP argues that even if you

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2 stand at our front door with the doors open, and can

3 hear music from there, it qualifies as a violation.

4 This interpretation left us perplexed. The third

5 ticket further deepened our confusion claiming that

6 speakers outside our store were playing music to

7 attract attention. We probably removed those

8 speakers, which were remnants from the previous

9 tenant that were not even connected to our music

10 system. During the hearing, when we explained this,

11 we were asked if we had evidence from a sound

12 technician proving those speakers' inactivity. For a

13 small business like ours, it is financially

14 impractical to allocate funds for a sound technician,

15 especially when money is already in short supply.

16 Our flower shop is not just a business, it's our

17 livelihood and the legacy of our family. It has

18 sustained us, put food on our table, provided

19 shelter, put my siblings and I through school, and

20 now my youngest sibling.

21 Witnessing individuals misuse their power to levy

22 hefty fines on hardworking families like ours is

23 disheartening. My parents tirelessly dedicate 60 to

24 80 hours each week to make ends meet, pay monthly

25

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2 rent, cover utility bills, and restock our store with
3 merchandise.

4 The pandemic left countless small businesses
5 reeling, and now we find ourselves under the
6 relentless scrutiny of city agencies.

7 So as you deliberate the purpose of bills to
8 curtail the exploitation of small businesses by
9 bounty hunters through unjust violations, we implore
10 you to contemplate the impact of these actions on
11 families like ours. Your support could be the
12 lifeline that ensures businesses like Flowers By
13 Giorgie continue to flourish. Thank you.

14 CHAIRPERSON GENNARO: Thank you. I'm just going
15 to jump in for a second, even though ordinarily I'd
16 wait until a panel is done. But now, the person--
17 the entity that you're talking about, or the
18 individual who heard sound outside your-- your
19 business, what-- was this someone from DEP?

20 MS. TELENDRA: No. The individual--

21 CHAIRPERSON GENNARO: It was the bounty hunter
22 guy.

23 MS. TELENDRA: It's the bounty hunter guy.

24 CHAIRPERSON GENNARO: Okay, fine. Fine. I just
25 wanted to make sure that-- because DEP would know in

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2 that situation that they have to use a decibel meter.

3 And so--

4 MS. TELENDRANA: They didn't. On the second
5 ticket that was issued, and I had the hearing with
6 DEP, that's what-- I raised the-- all the flags
7 during their--

8 CHAIRPERSON GENNARO: Right. Okay. No. This
9 is-- This is part of the whole bounty hunter
10 phenomenon, and why we're doing everything we can to
11 try to-- and we're moving on this. But thank you.
12 Let me go to the next witness.

13 MS. TELENDRANA: Thank you.

14 MR. GERGOV: Good evening. My name is Nikolay
15 Gergov, and I represent Pando 39. We've received 16
16 summons from the same individual. One of them was
17 from someone else, but 15 from the same individual.
18 We took the business as is, and there was a small
19 speaker right above the front door, which we took
20 down the moment we received the first one, by-- But
21 this time the summons kept coming. And as you're
22 already aware, there's a huge disconnect somewhere,
23 because most of the summons were issued in the two
24 weeks of this February, and we received them sometime
25 in the beginning of May. And then we received

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2 summons that were from last November as well and
3 December. If we are to pay the total final of those
4 16 sermons that's over \$20,000.

5 CHAIRPERSON GENNARO: You should fight those.

6 MR. GERGOV: Yeah.

7 CHAIRPERSON GENNARO: You should fight those.

8 Thank you.

9 MR. GERGOV: Thank you.

10 MR. MCCAWLEY: Hi, my name is Frank McCawley.

11 I'm a partner in Tito Murphys on 46th Street, right
12 on restaurant row. Our business is rest-- primarily
13 a restaurant with a bar. We have an area of about
14 300 square feet outside with two speakers that are
15 kept as background music. They are not facing the
16 street, even though we have outside dining. We were
17 summonsed 8 times by the same individual, by the same
18 bounty honor. He just keeps coming back, and coming
19 back, and coming back. Until we got our first
20 summons, we had no idea this was going on. We got no
21 warning. We just had no clue. So I think it's very
22 unfair. I think we're low hang-- low hanging fruit,
23 and we've been exploited.

24 CHAIRPERSON GENNARO: Correct. That's what's
25 going on. And that's what we're here to fix. And

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2 you know, Councilmember Holden, who, you know, is

3 hanging in with us this late in the hearing, and you

4 know, Bob and I-- well, Councilmember Holden and I

5 are very committed to making sure that-- that people

6 aren't abused by people who self-empower on a 50-

7 year-old unknown law, and that's what we're here to

8 fix. And so bear with us as we get through this. In

9 the meantime, anything that comes your way you should

10 fight.

11 MR. MCCAWLEY: Thank you.

12 CHAIRPERSON GENNARO: I thank this panel. I

13 direct Counsel to call the next panel.

14 COUNSEL: The next panel will be A.M. Riccielli,

15 with the East 17th Street Loft Corporation Co Op,

16 Gregory Guarino with Acoustics Inc., and Norma Cote.

17 CHAIRPERSON GENNARO: While we're here, I'm just

18 wondering if anyone from the administration has made

19 their way into the room? Okay. Thank you for being

20 here. Please tell the City-- the City Legislative

21 Affairs that we need someone from the Administration

22 to hear every single word of testimony that these

23 good people have waited around hours to deliver. And

24 they're not getting paid to be here. So it's the

25 least that we can expect for-- someone from the

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2 mayoralty, someone from the Administration to listen
3 to the citizens, and as further impetus to work with
4 the Council to get this fixed. But I thank you for
5 being here.

6 Okay, please, commence when you're ready. How
7 about you. You have to turn on the microphone, red
8 light on?

9 MS. COTE: Okay. My name is Norma Cote. I live
10 directly over a restaurant. It's a residential
11 building. It's a residential block. It's a
12 residential street. There are no other commercial
13 establishments on that block or at that intersection.
14 That restaurant plays its music in its dining room.
15 I don't hear it through the floor, because they have
16 sound protection equipment. But there's no way you
17 can introduce sound protection out of doors. And if
18 this restaurant should choose to play its music loud
19 enough that it penetrates into the outdoor space, it
20 will not only harm me, but it will harm everyone else
21 who lives around that neighborhood.

22 I think it is not fair to ask the residents to
23 endure the-- the destruction of their peace and quiet
24 in order to support a private profit-making
25 enterprise.

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2 Music is a kind of air pollution. It's no answer
3 to say, "Well, we'll just we'll just regulate it at
4 night." I am at home a lot. I work at my computer a
5 lot. It's just as destructive of my life in the
6 daytime as it is at night.

7 In order to have any enforcement at all, since
8 the city agencies will never be able to do it, you
9 have to preserve effective citizen complaints. I say
10 whatever problems you have with people who are
11 abusing it, don't throw the baby out with the
12 bathwater. Keep effective civilian complaints, which
13 has to be underlaid by effective penalties placed on-
14 - on violators.

15 Violators can't say, "Well, my music is just
16 background music." If it was just background, it
17 wouldn't be out in the street. And those people need
18 to be reined in. Thank you for hearing me.

19 CHAIRPERSON GENNARO: Thank you. Thank you, and
20 I do agree with you.

21 MR. GUARINO: My name is Greg Guarino. I'm from
22 Acoustilog Incorporated. We measure noise. We agree
23 that 24-244 clearly should not be used to penalize
24 accidental sound leakage. But Intro 160 will have
25

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2 unintended consequences due to its use of the wrong
3 measurement technique, dBA.

4 The current noise code includes the phrase "shall
5 include but shall not be limited to before specifying
6 three very limited examples, B1, 2, and 3." By
7 removing that phrase, Intro 160 will allow businesses
8 to disturb both businesses and residential neighbors
9 by only requiring them to conform to those three
10 limited examples.

11 I understand my Councilman's wish for an
12 objective standard. But all three examples only use
13 dBA. dBA ignores the bass. And as everyone knows,
14 bass is the problem. Bass is what comes through
15 floors, walls, windows, etc. Right now, a business
16 can at least use 24-218 to complain about bass from
17 another business. If the code has changed, that bass
18 leakage will no longer be a violation. Right now the
19 commercial music section, 24-231 protects residents
20 from some bass frequencies, but not the subbass from
21 subwoofers. The proposed change would allow
22 businesses that produce unlimited sub-bass,
23 disturbing everyone around them indoors and outdoors.

24 If you live near loud business, a gym club
25 restaurant or even a clothing store, you will not be

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2 able to complain about sub-bass coming through the
3 wall or floor. And if you work next to one, you
4 won't be able to complain at all, because dBA does
5 not properly measure the bass that you hear.

6 If you remember nothing else about what I'm
7 saying, remember that there are many ways to measure
8 it many different kinds of decibel measurements. dBA
9 ignores the bass, and bass is the problem.

10 CHAIRPERSON GENNARO: Thank you. I'd be very
11 grateful if you could provide a copy of your written
12 statement to the Committee Council.

13 MR. GUARINO: Our consultant, Alan Firestein, who
14 wouldn't be here if he wasn't 10,000 miles away, is
15 going to submit something more comprehensive.

16 CHAIRPERSON GENNARO: Please do, because we want
17 to get all of the technical subtle nuances correct.

18 MR. GUARINO: Exactly right. That's what we're
19 asking.

20 CHAIRPERSON GENNARO: Yup.

21 MR. GUARINO: Thank you very much.

22 CHAIRPERSON GENNARO: Yours is very compelling
23 testimony. We really appreciate you coming forward.
24 Make sure we get that.

25 COUNCILMEMBER HOLDEN: Uh, Chair could I...?

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2 CHAIRPERSON GENNARO: Oh, uh, I recognize
3 Councilmember Holden.

4 COUNCILMEMBER HOLDEN: Again, I thank you for
5 that. Because I don't know some of these things.
6 And we need the experts. That's why we have
7 hearings. So, I don't like the base either. And I
8 think that's the most annoying. So, I agree with
9 you. So, this is very, very good information. If we
10 could adjust it, we will.

11 MR. GUARINO: Thank you very much. We would be
12 more than to provide you with the information. And
13 this is what we suspected: that we've been hearing a
14 lot of words like decibel go around. And there's
15 different kinds of decibels. And there's-- You talk
16 about objective measurements. But there are
17 different kinds of objective measurements. This just
18 isn't the right one for this problem.

19 COUNCILMEMBER HOLDEN: So we could tweak the
20 bill, right?

21 MR. GUARINO: Right.

22 COUNCILMEMBER HOLDEN: With language that would
23 cover the bass. I'd appreciate that. Because I
24 don't want to create another problem by solving one
25 problem, we created another one.

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2 MR GUARINO: Okay.

3 COUNCILMEMBER HOLDEN: Thank you so much for
4 this.

5 MR. GUARINO: Thank you very much. And if it
6 matters, I live in Glendale.

7 COUNCILMEMBER HOLDEN: Thank you. Thanks for
8 that.

9 CHAIRPERSON GENNARO: Thank you.

10 COUNSEL: The next panel will be Peter Gibson,
11 Robin Warren, and Murphy Fitzpatrick.

12 You may begin when ready.

13 CHAIRPERSON GENNARO: If you could-- if you could
14 just hold on one second until I'm ready to listen.

15 Sorry about that. I just want it to be focused
16 on your testimony. Please commence.

17 MR. GIBSON: Okay. My name is Peter Gibson. I
18 am a concerned citizen. And I wanted to say that I
19 have concerns about the Bill 0160 that would
20 completely exempt any penalty for noise operating
21 from an interior space in a business. It seems to me
22 that passing this law would mean any business can now
23 play music as loud as they want without any
24 deterrence.

25

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Going forward, these laws would allow for a business operator-- a business operator that was previously-- previously considered a bad actor by their Community Board to play music without installing soundproofing or blast music directly into the street, as long as the speakers were in an open window inside.

These amendments would increase harmful noise in the residential neighborhoods that were already experiencing. These laws might make it easier for a business to operate, but would vastly and-- at a vastly and proportionately higher cost to the residents and the quality of life and health of those residents.

As you know, 311 database indicates that noise is the most common complaint in New York. New York City Department of Health Reports that 40% of New Yorkers report disruptive noise at home in the past three months. About 30% of New Yorkers with serious psychological distress report frequent noise disruption. The New York Department of Health also reports that common effects of noise is hypertension, diabetes, anxiety, increased risk of heart attacks.

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It seems that amending these laws would negatively impact the quality of life of many of your constituents. To produce the overall-- To produce an overall greater good and balance for New York City, businesses and residents-- and for businesses and residents, that we urge you to change these amendments.

So, the citizens--

CHAIRPERSON GENNARO: Please conclude.

MR. GIBSON: Okay. The citizen initiated noise summons program should be improved. I agree that meter evidence should be submitted, the business operator should be sent a copy of the proposed summons immediately. If the citizen submitting a proposed summons does not live in the neighborhood--

CHAIRPERSON GENNARO: Please conclude.

MR. GIBSON: --he should have several residents that reside in the immediate neighborhood co-sponsor the summons, but keep the effective citizen complaint program in place. Thank you.

CHAIRPERSON GENNARO: Thank you.

MR. FITZPATRICK: Hi, my name is Murphy Fitzpatrick. I'm a manager at a restaurant called BarDough on Restaurant Row on West 46th Street. And

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2 I think I can one up everyone where I have 18
3 violations from the same person. And I actually have
4 residential neighbors above and directly adjacent to
5 my establishment. And I've never received a 311 call
6 from any of them. And I'm friendly with many of
7 them, because when these violations started coming
8 in, I asked all of them, that they can always text me
9 let me know if they had issues.

10 And because I'm a smaller establishment as well,
11 and where I'm located close to Times Square, where my
12 rent is high, and my square footage is low, that my
13 violations total almost between three and four months
14 of my rent, which, if all of these hit my bank, would
15 probably put me out of business.

16 So this is something for me. And I totally
17 understand everyone else's-- who are on the side as
18 well as people who are abusing the noise, that for
19 myself who is not one of them, that I would like for
20 there to be some sort of justification that we can
21 get through, and again, that people that do abuse it,
22 yes, there should be some penalty. But for 18
23 violations from one person, for one location, that
24 really has no problems with any of their adjacent
25 neighbors doesn't really seem fair.

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CHAIRPERSON GENNARO: Thank you. And I will say
that before the-- before this section was uncovered,
that the bounty hunters were using, you know, life
went on and with the new noise code for 20 years, and
we were using the decimal standard. So, any
declaration that any witness would make that they're
under no obligation whatsoever to limit their noise.

You know, there was a paradigm in place that was
just blown up and the bounty hunters got into
business. And so I just-- I just felt it was
important to make that point that, you know, people
were getting decibel meter violations, this was
happening. It's not like, you know, the bounty
hunters showed up and then, you know-- now and only--
and only since their arrival is there any kind of
noise enforcement. That's just-- that's not the
case. We need to do better.

We need to do better, you know civilian
enforcement, we needed to do better on all frontiers.
But what we don't need is, you know, profiteers
running around who do not have your best interests at
heart. They just want to make a lot of money. But--
And any problem that you're having-- And any problem
that you're having, I would urge you to engage with

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2 your Councilmember, your local Community Board and
3 make yourself-- That's where you turn up the volume,
4 to them.

5 MR. FITZPATRICK: Yeah, we're doing that. And,
6 you know, that's your speculation that this person's
7 doing it on-- for profit. And that's, uh--

8 CHAIRPERSON GENNARO: I don't think that's
9 speculation, but we will agree to disagree and we're
10 calling the next panel. Thank you.

11 COUNSEL: The next panel will be Sharon Trennor
12 and Cormac Flynn

13 CHAIRPERSON GENNARO: Cormac. Cormac and I go
14 back a long time.

15 Is that the League of Conservation Voters days or
16 something? Or something like that?

17 MR. FLYNN: Yeah, I was there a long time.
18 Before that--

19 CHAIRPERSON GENNARO: Yeah, right. You've got to
20 put on your microphone, you know.

21 MR. FLYNN: Well, I was there a long time, but
22 before that Former Speaker Vallone.

23 CHAIRPERSON GENNARO: Oh, right. Right. Right.
24 Yeah. Please.

25

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MS. TRENNOR: Hi, my name is Sharon Trennor, and
I am representing eight bars and restaurants in
Manhattan, Jack Dempsey's, the Playwright Irish Pub,
the Playwright Tavern, McHale's, BarDough, Legends,
Tito Murphy's, and St. Pats.

I am testifying as how it is unfair that
civilians can write up their own noise violations and
get paid for it, creating bounty hunters, and I feel
like bars and restaurants are being targeted.

I am also testifying that the rules are unclear
as it states unreasonable noise from sound
reproduction device for commercial and business
advertising purposes. Meanwhile, businesses are not
advertising, but simply creating a nice ambience for
their customers.

As I mentioned before, our eight locations have
received over 87 violations. We started receiving
them in the mail of March 2023 for dates occurring as
far back as August 2022. This was the first time we
had received any sort of noise violations. And as
soon as we received the first one, we actually took
down our speakers. The problem did not stop there.
We began to receive them week after week in the mail,
some days two days apart, some days a week apart, all

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2 ranging from August 22 to March 23. So these
3 violations were being held for over six months before
4 being sent out. As a matter of fact, I'm still
5 receiving them from dates in October 22, 5th and 7th,
6 but they're only been mailed out September 27 of this
7 year, nearly a whole year later.

8 I believe this is an attempt to rack up as many
9 offenses as possible in order for maximum penalty
10 payouts.

11 Nobody has come to actually give us a violation
12 in person. Some of these violations have gone into
13 default, 59% as we established, because we never
14 actually received them, and only find out about them
15 when we got a default letter. Some of our managers
16 have even witnessed the bounty hunters going right up
17 to the speakers to video them. May I add there's two
18 individuals in particular are responsible for 95% of
19 these--

20 CHAIRPERSON GENNARO: Yeah, we know. We know
21 that.

22 MS. TRENNOR: Yeah. Okay. [Bell rings] Can I
23 continue just--
24
25

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CHAIRPERSON GENNARO: Very briefly, because--
very briefly. Because there are scores of witnesses
still to testify.

MS. TRENOOR: What is the point in paying for
outdoor seating permits and music royalties, if we
can even give our customers the same ambience as
inside? They'd rather listen to music than honking
horns and sirens.

I feel the need to testify today, because I'm
genuinely worried about how we are supposed to pay
all these fines if they are sustained. We also have
to pay legal representation. Some businesses will
not survive this. We're still recovering from the
repercussions of COVID, and we never got back to
where we were before then. This is just creating
more stress for us.

May I suggest that civilians do not get paid for
reporting noise complaints. And if they do file
complaints that they'd be filed within 30 days of it
actually occurring? I'm also suggesting that all the
rest of the noise violations be dismissed. We
weren't given the chance to cure them in the first
place. Had we done that, we wouldn't have racked
them up.

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2 CHAIRPERSON GENNARO: This is-- Yeah. I-- The
3 ones that are already in the pipeline, we'll do what
4 we can. Anything that has been adjudicated, it's out
5 of our hands. But you know, we're trying to work as
6 quickly as possible to get the best result as soon as
7 possible, and to have those that have not yet been
8 adjudicated thrown out. Thank you. I'm going to
9 move on to Cormac now.

10 MS. TRENNOR: Thank you for your time. I
11 appreciate it.

12 CHAIRPERSON GENNARO: You bet. Sure. Cormac?

13 MR. FLYNN: Hello. My name is Cormac Flynn and
14 like Clint before from Community Board 3, I'm on
15 Community Board 2. We also haven't taken a position
16 yet because our Community is really just learning
17 about these bills in the last few days.

18 However, for background, I'm a member of
19 Committee Board 2 for 12 or 15 years. I'm the SLA--
20 former SLA Chair. I'm also the former head of my
21 Block Association on the residential side. And I've
22 been for over 10 years on the board of the Village
23 Alliance Business Improvement District, working to
24 fill empty storefronts and that sort of thing.

25

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So, I actually know the noise issues from every
which side on this thing. Let me just say that I do
not, and no one I know has any objection to the main
legislative purpose that you seem to be pursuing
here, which is to stop the monetization abuse of-- of
a complaint mechanism for the noise code.

However, we have very large concerns about Intro
160. And most of those concerns, it turns out, were
just addressed a few minutes ago by that gentleman
from-- what was it? Acoustilog? -- who came up.
They are specifically about the bass. So if you
strip out the language that says, you know,
"including but not limited to," and you just leave
these three 20-year-old examples, those examples are
all A weighted, right?, and not C weighted. And so
you end up leaving out bass and sub bass from any
kind of mechanism. And this is important, because as
you said, Mr. Chairman, 20 years ago, the noise
revisions were made. And I remember because I
testified a few times on that. In those 20 years,
technology around bass, around woofers and
subwoofers, have just changed dramatically. And now
you can get that kind of sound when you weren't able
to.

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2 CHAIRPERSON GENNARO: Thank you. Thank you,
3 Cormac. And certainly, you know, the points were
4 made about the bass, and we will duly consider it.
5 We don't want to go backwards, and we're trying to go
6 forwards.

7 MR. FLYNN: Thank you.

8 CHAIRPERSON GENNARO: Thank you very much.
9 Andrew, if I could just see it for a second? And you
10 can call the next panel.

11 COUNSEL: The next panel will be Jonathan Rinaldi
12 and Raul Rivera.

13 MR. RINALDI: That's on Great. Good morning
14 Chair. I have some materials showing how you,
15 Gennaro, are taking significant bribes from Kathy--
16 Kathy or Kathleen, wife of registered lobbyist Robert
17 Bookman in exchange for you introducing 1194.
18 Kathleen is married to Robert. I have email--

19 CHAIRPERSON GENNARO: Your testimony is out of
20 order.

21 MR. RINALDI: I've had emails between the both of
22 you, but Intro 1194 is something that has no
23 sponsors. It's just your bill. And which not-for-
24 profits do you actually support? Do you--
25

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2 CHAIRPERSON GENNARO: We don't answer questions.

3 You get to testify and don't get to ask questions.

4 MR. RINALDI: Right. Well, I'm just letting you
5 know that I've have evidence that you are taking
6 bribes for your bills that you're introducing. Plus
7 you-- you really don't care about the community
8 because you filled--

9 CHAIRPERSON GENNARO: Okay, you're out of--
10 Sergeant, shut off the microphone--

11 MR. RINALDI: --our district with illegal aliens.

12 CHAIRPERSON GENNARO: You're out of order.
13 You're off topic. Thank you.

14 MR. RIVERA: Can you hear me? Good afternoon.
15 My name is Raul Rivera. I'm a TLC driver and a TLC
16 driver advocate. It's been brought to our attention--
17 - I mean, you want to censor people. You don't want
18 to let people speak, not even for two minutes. I
19 don't know how that works. But we are here at your
20 committee, because we are New Yorkers and we are
21 concerned--

22 CHAIRPERSON GENNARO: If you're going topics,
23 speak on topic. If you're going to speak on-- if
24 you're going to go off-topic then you're not going to
25 be allowed to testify.

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2 MR. RIVERA: We're not-- We're not going off
3 topic. We're speaking about you and your committee--

4 CHAIRPERSON GENNARO: I'm-- It's not--

5 MR. RIVERA: Hold on a second.

6 CHAIRPERSON GENNARO: I am not the topic.

7 MR. RIVERA: I'm asking you to hold on a second.
8 We're speaking about these bills and you're--

9 CHAIRPERSON GENNARO: No you're not. You're not.

10 MR. RIVERA: You're cutting-- You're cutting us
11 off.

12 CHAIRPERSON GENNARO: You're not talking--

13 MR. RIVERA: We have two minutes to speak, sir.

14 CHAIRPERSON GENNARO: No. You get-- You get two
15 minutes to speak on topic.

16 MR. RIVERA: That is censorship.

17 CHAIRPERSON GENNARO: On topic.

18 MR. RIVERA: It's censorship. You're cutting us
19 off. We ask respectfully--

20 CHAIRPERSON GENNARO: GENNARO: You're off topic.
21 Sergeant, turn off--

22 MR. RIVERA: --that you stand down and let us
23 testify.

24 CHAIRPERSON GENNARO: Sergeant's-- Call the next
25 panel. Call the next panel. Call the next panel

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[BACKGROUND VOICES]

CHAIRPERSON GENNARO: Call the next panel. I ask
the sergeant to clear these individuals out of the
room.

[BACKGROUND VOICES]

COUNSEL: We will now turn to zoom testimony.
For panelists who are testifying--

[BACKGROUND VOICES]

We will now turn to zoom testimony. When your
name is called a member of our staff will unmute you
and the Sergeant at Arms will give you the go ahead
to begin. Please wait for the Sergeant to announce
that you may begin before delivering your testimony.

We will return to ought to in-person testimony
after we finished the Zoom testimony. Yes. We will
be doing the in-person testimony and then the Zoom
testimony. I would now like to welcome Eric
Eisenberg to testify.

MR. EISENBERG: Hi. First thank you to Keith
Powers for your strong bills. Now on to the bad ones
which are Intros 1194 and 160. In the early 1970s,
New Yorkers realized that city agencies namely the
NYPD and DEP were failing to enforce their noise
laws. They knew that chronic noise is not a mere

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2 nuisance, but also harms our sleep, our health, our
3 learning, and even our lifespans. So, City Council
4 in the 1970s noise code enabled and monetarily
5 encouraged members of the public to also enforce our
6 noise laws against businesses that purposely direct
7 their advertising noise to the public sidewalk.

8 Unfortunately, in 50 years the DEP never
9 explained to the public how they could participate.
10 In 2022, the public sick and tired of the city's non-
11 enforcement read the noise code and again insisted
12 that yes, they did have a right to fight for a
13 healthy soundscape in New York City.

14 OATH has treated businesses more than fairly at
15 noise hearings. 80% of citizen-based noise summons
16 result in a violation finding, much higher than the
17 49% of the NYPD OATH summonses. Nonetheless, OATH
18 has very generously issued \$0 fines when the
19 businesses stopped their noise pollution by the time
20 of the hearing. That's unprecedented. And where the
21 businesses have an alternate explanation to the
22 music, like outdoor dining, OATH has been dismissing
23 the tickets.

24 Only persistent and entirely unnecessary noise
25 polluters have anything to fear from citizen

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2 enforcement at presents. For responsible businesses,
3 the only consequence of a ticket is free education as
4 to the noise laws.

5 The results of the past year of citizen
6 enforcement have been outstanding. Numerous
7 businesses in Midtown, the Village and Corona have
8 stopped unnecessarily blasting their music and
9 advertising come-ons directly to the sidewalk.

10 Citywide, 311 complaints have dropped from 766,000 in
11 2021 by about 100,000 or 13%. That's overall noise
12 complaints by 311 in New York City. That's-- That's
13 insane. That's an amazing improvement. All that is
14 really needed. And on top of our current citizen
15 enforcement lawsuits is better education, like the
16 DEP immediately telling businesses when they get a
17 complaint that they got a complaint. It's not hard.
18 The DEP has just failed businesses in that regard.

19 [BELL RINGS]

20 SERGEANT AT ARMS: Time expired.

21 MR. EISENBERG: Can I have a little more time?

22 CHAIRPERSON GENNARO: Time expired.

23 MR. EISENBERG: Maps of quality of life
24 improvement--
25

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2 CHAIRPERSON GENNARO: Time expired. Next
3 witness.

4 COUNSEL: The next witness is Jeanine BATA.

5 SERGEANT AT ARMS: Starting time.

6 MS. BATA: I'm here to testify about noise camera
7 location selection. My name is Jeanine Bata. I live
8 in East Flatbush, and I began advocating for use of
9 noise cameras combined with an educational component
10 in 2016, attempting to engage with my elected leaders
11 which was unsuccessful. I testified at the City
12 Council hearing on the Smart City on January 21,
13 2021, citing cities throughout the world that were
14 already piloting noise cameras.

15 I'm affiliated with organizations concerned with
16 acoustics and noise, but I'm not representing them at
17 this hearing. I'm only speaking for myself and other
18 New Yorkers affected by vehicle noise who live in
19 areas of low 311 usage. I'm here to request that the
20 city council and DEP look beyond NYC 311 data and
21 direct complaints to elected leaders when selecting
22 locations for noise camera placement. A high volume
23 of 311 noise complaints might represent a prevalence
24 of high volume of noise, or it might represent
25 complaint behavior. Low numbers of 311 noise

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2 complaints might represent a quiet area or might

3 represent a noisy area where residents are reluctant

4 or afraid to submit noise complaints. There are

5 areas like mine where elected leaders don't have much

6 interest in or knowledge of noise pollution as a

7 health issue. Most residents here don't use 311 or

8 complain directly to elected leaders, but they will

9 complain about noise in NYPD, Community Council, or

10 Build A Block sector meetings.

11 I suggest the following three ideas about using

12 broader methods of site selection and I ask the City

13 Council and DEP to consider the following: Outreach

14 efforts that combine marketing and education as a

15 means of giving advanced warning to drivers,

16 educating about health risks of noise and marketing

17 use of reporting noise, and I'm going to send in my

18 updated testimony and October 24, 2011, TLC press

19 release that did this in such a super fantastic way.

20 [BELL RINGS]

21 SERGEANT AT ARMS: Time expired. Please wrap up.

22 MS. BATA: Okay, comprehensive noise--

23 COUNSEL: The next witness is Deitmar Detering.

24 MR. DETERING: Thank you, Committee. Thank you,

25 Chair Gennaro. You have a packed agenda today, and I

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2 regret that I can only speak to citizen noise
3 complaint matters. The city kept this noise
4 complaint program a secret for over 50 years. When I
5 inquired with the DEP in April of last year about how
6 to submit citizen noise complaints under Section 24-
7 261, the department had neither information, nor
8 forms, nor processes for this.

9 To this day, the DEP publishes no information
10 about citizen noise complaints. It does not, and to
11 my knowledge, never did publish any information about
12 the city's rules against advertising noise pollution
13 either. Why is that? To fill the void and to
14 effectively answer all the requests that I received
15 about how to participate in the program, I've created
16 a how-to that I've shared as a Google Doc. But soon
17 you can find it online at NYCquiet.org. But it
18 really should be the DEP providing that information.
19 Please understand, Section 244 B is not about noise
20 coming from legitimate-- legitimate purposes. If a
21 bar or restaurant is allowed in the course of the
22 business, then that is not advertising and the DEP
23 deems such complaints frivolous already. Such
24 complaints will not become a summons, will not reach
25 the respondent and will not get to OATH. However, if

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2 it can be shown that a business is purposefully

3 placing or using a speaker to be heard by the general

4 public, then such businesses must be held accountable

5 for such nuisance. Then not with the noise, the

6 city's full of it, and the noise code. But not just

7 protecting our hearing but also our attention must be

8 enforced. Unlike noise from much of construction and

9 traffic, advertising noise only benefits the polluter

10 at the expense of its law-abiding competition in the

11 neighborhood, and all of us New York's denizens.

12 Making polluters stop has no effect on the industry

13 as a whole. And all of us win some peace and quiet.

14 Intro 160 is pro-noise because it would give carte

15 blanche--

16 SERGEANT AT ARMS: Time has expired. Thank you.

17 MR. DETERING: --seeking free advertising with

18 noise. All they need to do is place the speaker--

19 COUNSEL: The next witness is Leslie Clark.

20 SERGEANT AT ARMS: Time starts.

21 MS. CLARK: Hello, thank you. I want to in--

22 investigate some of the words that are being used

23 here today. They're talking about advertising and

24 just ambiance sound. One of the representatives of a

25 restaurant even said that they-- why couldn't they

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2 have their ambient sound outside when they were
3 having it inside? There are two reasons for that.
4 One is that I live over those restaurants. And I
5 don't want their ambient sound in my home. The
6 second reason is that it's illegal.

7 The other thing is the use of the term
8 advertising in terms of noise. All noise that comes
9 out of restaurants and bars is in fact advertising.
10 It is saying to the people walking by, "There's a
11 party in here come on in." And the reason why these
12 things matter today, and the fact that they these
13 terms are not being used carefully at all in this
14 discussion today is that with the zoning text
15 amendment that passed a year and a half ago, the--
16 all restaurants will be allowed to keep their windows
17 and doors open at all times that they are in
18 operation. And also with Local Law 121 that passed
19 in August, no restaurant can be restricted in its
20 hours to less than 14 hours. So that-- put it all
21 together. You've got you have people-- you have
22 restaurants who are going to be in business for 14
23 hours during which they will be allowed to keep their
24 windows and doors open at all times, basically
25 blasting their ambient music at me.

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2 This is not something that we that we want as a
3 city. The fact that people-- that there are citizen
4 enforcers out there is in fact a very good thing, and
5 the fact that in this committee hearing, they were--
6 it was said of citizen enforcers they are more
7 motivated by profit than by quality of life. In
8 fact, that is an excellent description of many, many
9 restaurant and bar owners who are much more profit
10 motivated by profit than by the quality of life of
11 their neighbors, thank you.

12 SERGEANT AT ARMS: Time has expired. Thank you.

13 COUNSEL: The next witness is Alfred Fuente.

14 SERGEANT AT ARMS: Time starts.

15 Thank you, Chair for hearing me today. And thank
16 you to the Committee for considering these bills.
17 I'm an attorney that represents restaurants and bars
18 before the State Liquor Authority, before Community
19 Boards, as well as before OATH. And I'm-- I oppose
20 all the bills before the Committee. We live in a
21 city right now that is not responding to the
22 disorderliness, the noise. The police will not
23 respond to our calls. We had somebody try to climb
24 up the scaffolding of our building the other day, and
25 we called the police, and they do not answer.

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I'm also flabbergasted that two individuals have caused 90% of these problems, and that no one is considering taking action against them, whether it's the restaurant and bars that are affected, that can bring causative action against those two individuals, DEP, who's also profiting from the receipt of all of these of all the revenue generated-- generated by these tickets, that Mayor's Office of Special Enforcement can bring a proceeding against these individuals. There needs to be enforcement-- Excuse me, there needs to be action taken by the restaurants themselves against the people that are causing all of these problems and all of these violations to be lodged against them.

I understand and appreciate how unfair it is to them. But nevertheless, it's also unfair to New Yorkers who are already living in a city littered with homeless people, marijuana use rampant everywhere, as well as open containers. And we do not have any kind of authorities that are responding to our needs. Because when you call the police, they don't-- they don't show up. And when you call the precinct, you're told to call the police. So we're living-- we're living in a place where the city

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2 government is not answering the-- the neglect that is
3 continuing to grow throughout the city, and instead
4 we're going to be rewarded with-- with more noise and
5 more chaos throughout the streets. Thank you for
6 your time and thank you for considering my testimony.

7 COUNSEL: The next witness is Deborah Farley.

8 SERGEANT AT ARMS: Time starts.

9 MS. FARLEY: Thank you. My name is Debbie Farley
10 and I have resided in Sunnyside for 72 years. My
11 perspective on noise violations, and who was most
12 negatively impacted by it is diametrically opposed to
13 those of businesses that gave testimony today. My
14 apartment building is adjacent to two restaurants.
15 Both have dining sheds, both have curbside dining,
16 and one restaurant has backyard seating. All of my
17 windows face either the street or avenue sides of
18 these dining establishments.

19 Because of the proximity of the two restaurants
20 to my building, I cannot escape the raucous noise
21 outdoors. In an attempt to deafen the noise my
22 apartment windows have been remained permanently shut
23 for the last three years. To watch television, hold
24 a simple conversation, or get a restful night's
25 sleep, my windows must remain closed. My stress and

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2 anxiety levels have risen sharply due to the

3 interrupted sleep patterns. The excessive noise

4 level makes falling and staying asleep impossible.

5 Living with windows that are permanently sealed,

6 never feeling fresh air gives me a feeling of

7 entrapment inside of my apartment. Both restaurants,

8 dining sheds, and curbside dining areas are packed

9 with large noisy crowds every night of the week.

10 Live entertainment is often on weekends and

11 performances are amplified with outdoor speakers and

12 microphones. When there is no live entertainment,

13 the music being played inside the restaurant is

14 played to outdoor speakers mounted onto the sheds.

15 Even during the days and nights when there are no

16 customers seated outside, music is blasting through

17 speakers mounted onto the shed. Sunnyside is a

18 residential, family-oriented community. Living 20

19 feet away from these restaurants demands that

20 measures need to be adopted to address the chronic

21 noise violations and lack of enforcement. Exposure

22 to hours of continuous loud noise contributes to

23 sleep disturbances, sleep deprivation, high blood

24 pressure, heart disease, anxiety, and stress.

25 SERGEANT AT ARMS: Time has expired. Thank you.

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2 COUNSEL: The next witness is Ernest Welde.

3 SERGEANT AT ARMS: Time starts.

4 MR. WELDE: My name is Ernest Welde, and I'm
5 speaking in opposition to Intro 1194. Removing the
6 only productive thing about the noise code
7 incentivizing citizen enforcement is an awful idea.
8 I live in New York City. Although I have not filed
9 any noise complaints myself, I fully support the
10 citizen reporting component and I participate in the
11 citizen component of the idling law. At my day job,
12 I'm an attorney and a legislative director at an
13 environmental health-based nonprofit. I studied
14 legislation and work with legislators to enact
15 protect-- protective laws.

16 I believe that the noise law should be omitted
17 for clarity but you all should be extremely skeptical
18 of what Intro 1194 will actually do. It will destroy
19 the citizen component of the noise complaint system,
20 the only thing that it's actually working to protect
21 residents from excessive and unlawful noise. New
22 York City citizen program is the best legislation in
23 America that I know of to deal with daily micro-
24 violations such as excessive unlawful noise.

25

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2 Giving citizens the power to record these

3 violations and receive a percentage of the proceeds

4 is pure genius and the model to emulate.

5 Councilmember Powers is absolutely correct: Noise

6 creates a lot of health issues. Excessive noise can

7 be a major environmental problem impacting the health

8 and well-being of residents of New York, and this

9 creates a broad range of issues including general

10 annoyance, sleep disturbance, negative effects on the

11 cardiovascular and metabolic system, as well as

12 cognitive impairment in children. Excessive noise

13 can take years off one's life. Intro 1194-- if Intro

14 1194 passes, it will regulate the noise reduction

15 program to the Silent Night Program of Bloomberg's,

16 the same dark and lonely, and place zero enforcement.

17 A minuscule number of tickets were issued before

18 this, and after-- if 1194 passes, a miniscule number

19 will pass. There seems to be a focus on what

20 citizens are making on this program and accusing them

21 of abusing the system, but the real focus should be

22 on how much benefit the citizens have brought to

23 these communities by making them more peaceful and

24 quiet places to live. Excessive unlawfully loud

25 noise is a huge environmental problem, and there was

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2 no enforcement. This year there is enforcement, and
3 we are seeing huge changes. Chair Gennaro, I saw
4 that you identified the citizens enforcers as the fly
5 in the ointment. Unfortunately, I believe you got it
6 wrong. Excessive noise from commercial
7 establishments is the actual fly in the ointment.
8 The ointment is the peaceful enjoyment of our
9 environment.

10 We New Yorkers have a lot to deal with.
11 Excessive noise is one of those, and this is a
12 program that is stopping that excessive noise.

13 SERGEANT AT ARMS: Time has expired. Thank you.

14 COUNSEL: The next witness is Diana Mauer.

15 SERGEANT AT ARMS: Time starts.

16 COUNSEL: Diana Mauer.

17 SERGEANT AT ARMS: Time starts.

18 COUNSEL: The next witness is Hunter Severini.

19 SERGEANT AT ARMS: Time starts.

20 MR. SEVERINI: Hello, my name is Hunter Severini.
21 I'm a resident of downtown Manhattan. And I would
22 like to testify against any and all bills weakening
23 citizen noise enforcement, particularly the two bills
24 that were mentioned earlier, those being 1194 and
25 160. I live in the Central Business District. And

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2 like Debbie, who just testified, I literally cannot
3 open my window. It's a nightmare. I live on a high
4 floor. And yet I don't ever get to have fresh air
5 because anytime I do, it's just a constant barrage of
6 noise. So my suggestion to the Council is that they
7 should look into using technology to enforce noise,
8 such as unnecessary honking, which is like a virus in
9 the city, or like a cancer pretty much because it's
10 like we don't know how to get rid of it.

11 You know, there are other things. Even dog
12 barking. I mean, DEP is in charge with enforcing
13 stuff, but they basically-- they're under resourced
14 as well. But they also don't really go out of their
15 way to help. I've made numerous complaints about
16 things that have, you know, and at most gotten a
17 letter in response, not any kind of like in-person
18 visit, which is, you know, them kind of saying, "We
19 don't really believe you."

20 And then looking at all these businesses that
21 testified most of them seem to have been notified but
22 not done anything. Like they all seem to have 10 or
23 20 violations, and like I really don't think-- maybe
24 if they got a few at once, I really don't think they
25 all came on the same day. So I don't really buy

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2 this. I think that these people are some-- are, you
3 know, acting surprised.

4 But we live in a country of laws. Ignorance does
5 not excuse guilt. I think there are plenty of people
6 who would have common sense after receiving one of
7 the summons say, "What it is for?" Go to the
8 hearing. Was found in violation, and corrected the
9 problem.

10 And besides that, I really disagree with the tone
11 of this hearing. I think it's been conducted in a
12 one-sided manner. You know, Councilmember Gennaro, I
13 would appreciate much more impartiality from your
14 end. I don't think the way that you've presented
15 this is respectful to the citizens who have taken
16 opposing positions. Whatever, you know, the outcome
17 of all these hearings and bills is, there are points
18 to be heard on all sides. And if I, openly saying
19 that one side is right does not encourage people to
20 come forward and testify against bills.

21 SERGEANT AT ARMS: Time has expired. Thank you.

22 COUNSEL: The next witness is Hayden Brockett.

23 SERGEANT AT ARMS: Time starts.

24 MR. BROCKETT: Good afternoon. My name is Hayden
25 Brockett. I'm a lawyer. My family and I live in

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2 Manhattan. I've never filed a commercial noise
3 complaint, so unlike the businesses and lobbyists who
4 testified today, I don't have a financial
5 disincentive here, or a conflict of interest, but I
6 urge the Committee to oppose Intros 160 and 1194
7 because they will both harm-- they will both New
8 Yorkers' health and undermine citizen enforcement
9 laws that are already on the books and working.

10 Noise hurts our health, just plain and simple.
11 And as Chair Gennaro and Mr. Holden said at the
12 outset of the Committee hearing, in the last 20
13 years, New York has gotten noisier. And that's
14 because right now, for the most part of our noise
15 code, the so-called objective standard actually means
16 no enforcement. That's how businesses like it.

17 Almost no noise enforcement takes place because
18 only the DEP or the NYPD can issue a ticket. And
19 they don't show up for 7 to 10 days and they don't
20 write summonses. You need boots on the ground.
21 Citizen enforcement works. Complaints are down 13%.
22 And if you want to tweak around the edges, fine, but
23 you don't need to change the law. Councilman Holden,
24 you asked for feedback. And as written Intro 160
25 will make it impossible for ordinary New Yorkers to

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2 make commercial noise complaints. If it passes, in
3 effect, you'll have that same system that you were
4 talking about that you don't like where it's only the
5 DEP or the NYPD, that'll be everywhere. And there'll
6 be no effective enforcement. Only if the DEP shows
7 up at the right time with the right equipment, and it
8 can get the offending business when they're still
9 doing it will there ever be a violation issued. That
10 is not an objective standard that is an unenforceable
11 standard.

12 This system doesn't work for other parts of our
13 noise code. It does work for commercial noise
14 pollution. Commercial noise pollution is about
15 money. The businesses who pump speakers onto our
16 streets for every passerby to be assaulted are in it
17 for the money. We-- Jobs make money when people walk
18 in the door. And so do bars and restaurants. They
19 actually-- the bars and restaurants that break the
20 law are hurting the bars--

21 SERGEANT AT ARMS: Time has expired. Thank you.

22 MR. BROCKETT: Thank you.

23 COUNSEL: The next witness is Michael Streeter.

24 SERGEANT AT ARMS: Time starts.

25

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MR. STREETER: Hi, I wanted to-- to express my
support for most of the Introductions being discussed
today. I think they're mostly solid and necessary.
And I want to thank Mr. Powers for introducing them.
But I wanted to use my time to speak out against
Intro 160 and Intro 1194, even though I've never
filed such a complaint myself.

311 has been completely useless in addressing
noise complaints for years, nothing happens and if
someone does get sent over to inspect, it's a
Michigan J. Frog situation where you'd have to luck
out that they show up at a time where the-- where the
noise issue isn't temporarily off or long gone. Or
you get an officer who tells you, "Hey, this is New
York. Go move to Ohio." It's a joke. We all know
this. We need video and audio evidence from
citizens. I disagree with Chair Gennaro's statement
that there was that-- there was enforcement before
the bounty hunters came along. There-- There has
been a huge difference since citizens have been
submitting complaints. Even just six of them.
Gutting this citizens' program would take away the
most valuable tool that we have in addressing illegal
noise pollution from food shops, restaurants, weed

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2 shops, the cell phone stores, and the like. We
3 shouldn't have to put up with this.

4 You know, these lawyers got to go on earlier for
5 like 20 minutes. And it really seems like they're--
6 they're running the show here. The fact remains that
7 commercial noise is a huge problem.

8 One thing I wanted to bring up that hasn't been
9 really been discussed is that this this music when
10 you pass a food place, or a weed shop, or whatever,
11 it's overstimulation. And that's something that a
12 lot of people struggle with, or they're struggling
13 with this with their children or loved ones. There's
14 enough noise from traffic, but music of varying
15 levels of volume and annoyance to divert our
16 attention, which is advertising, that's illegal and
17 we-- we didn't opt into that. I think people are--

18 SERGEANT AT ARMS: Time expired. Thank you.

19 CHAIRPERSON GENNARO: Thank you.

20 COUNSEL: The next witness is Michelle Compo.

21 SERGEANT AT ARMS: Time starts.

22 MS. CAMPO: Hello. Do you hear me?

23 SERGEANT AT ARMS: We can hear you.

24 MS. CAMPO: Good. Okay. I represent most of
25 Little Italy in Manhattan as well as the Bowery Block

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3 Association. The idea of weakening these Intro bills
4 that has been long accepted-- the bills have been
5 long accepted, hard won with restrictions that-- and
6 wanted restrictions because what-- what is
7 recommended is an assault on myself, my family, and
8 the residents of New York City. Restaurant noise is
9 already at ear damaging levels with little to no
10 compliance to existing restrict, no adherence.
11 Calling 311 is kind of a joke. A rough joke.
12 Community residents are, or should be as
13 important as the restaurants. Unbelievable to even
14 propose 14 hours a day. Noise pollution is well
15 documented as having adverse health outcomes. Are
16 individuals to be considered more important than our-
17 - Excuse me. Are restaurants to be considered more
18 important than residential well-being? I think
19 that's what you're trying to say.
20 Residents also work from home and we need our
21 sleep.
22 Also, legally speaking, as was mentioned before,
23 ignorance of the law is not an excuse. And I agree
24 that this has been a very unbalanced hearing. Very.
25 We're all very frustrated and very annoyed. And we

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2 live here, and we've lived here all our lives, and
3 you should have some respect for that. Thank you.

4 CHAIRPERSON GENNARO: Thank you.

5 COUNSEL: The next witness is Laura Sewell.

6 SERGEANT AT ARMS: Time starts.

7 COUNSEL: Laura Sewell?

8 SERGEANT AT ARMS: Time starts.

9 MS. SEWELL: I apologize. I'm having trouble
10 with my laptop. I'm Laura Sewell. I'm the Director
11 of the East Village Community Coalition, which has
12 long worked to support the local individual
13 businesses that make our neighborhood unique, and to
14 support local residents in seeking a balanced quality
15 of life in an area well known to be oversaturated
16 with nightlife establishments. And I want to thank
17 everyone contributing to productive conversation on
18 this today, because we definitely need additional
19 help.

20 One thing: Outdoor speakers have always been and
21 should continue to be prohibited in outdoor dining in
22 New York City. The burden is on residents as always
23 to support-- report them and work with the Community
24 Board, Council Office, and precinct to educate
25 businesses and work to get them removed. But we have

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2 had some success with that in our area. I know it's
3 not citywide, and it should be.

4 But we do want to clarify that we are only
5 talking about sound emanating from within a business
6 here. To my understanding, I guess that's a question
7 you can tell me if I'm wrong when I'm done. Our main
8 comment on Intro 160 is that if the Council is
9 considering a change, rather than completely
10 exempting what's commonly known as background level
11 music from within an establishment, why not define a
12 reasonable cap on the volume of music in decibels
13 (not dBA; thank you to the gentleman from
14 Acoustilog). We don't have the expertise to state
15 what that level would be, but in layman's terms, if I
16 have to shout to be heard by my companion passing by,
17 or if the person on the other end of the phone wants
18 to know what the heck is that, it's too loud.

19 For Intro 1194, you know, the city has
20 increasingly turned to citizen enforcers for help
21 with handling standing violations such as idling, and
22 we find no reason why citizen enforcers could not be
23 continued to be helpful in enforcing DEP violations,
24 given appropriate parameters. I've heard some
25 horrible things here today.

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2 SERGEANT AT ARMS: Time expired. Thank you.

3 CHAIRPERSON GENNARO: Thank you.

4 COUNSEL: The next witness is Lisa Ann Chapman.

5 SERGEANT AT ARMS: Time starts.

6 MS. CHAPMAN: Hello?

7 SERGEANT AT ARMS: We can hear you.

8 MS. CHAPMAN: Hi. Yeah, my name is Lisa Chapman.

9 I'm a resident living in a mixed-use neighborhood,
10 with a hotel, with a nightclub and restaurants that
11 operate sometimes until two or four o'clock in the
12 morning, and I've tried all means, 311. They also
13 have a smog hog. And you know, I've been to DEP and
14 311. I just-- The noise codes or-- or the-- what's
15 available to me as a resident who can't sleep is-- is
16 limited and I just-- I just want to say that I can't--
17 - I just would urge-- I understand the issues, but I
18 would urge that we not be further restricted from our
19 ability to live peacefully and-- and get sleep
20 especially at two o'clock in the morning. Anything
21 after midnight, and I agree with-- with what's said
22 about-- there should be a way to measure it. There
23 should be a decibel level that's livable for the
24 residents, that also-- you know, in this situation,
25 the-- the venues that the-- that the hotel has have

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2 glass walls and rooms that open up. So when the
3 nightclub is in full swing, in the middle of the
4 night, the noise that's emanating from them is not
5 one that a person can live with or sleep with. And
6 you know, I have young children and I have elders
7 here at home.

8 And so I just think that there needs to be a
9 recognition of the that there has to be a level
10 that's-- that's livable. And it just-- that's it.
11 Thank you.

12 CHAIRPERSON GENNARO: Thank you.

13 COUNSEL: Next is Micki McGee.

14 SERGEANT AT ARMS: Time starts.

15 MS. MCGEE: Thank you very much for having this
16 hearing. I want to express my gratitude to
17 Councilmember Holden for still being here. It is my
18 understanding, although I can't see it on my own
19 screen, that the Chair has left the meeting. And I
20 hope--

21 CHAIRPERSON GENNARO: I'm here. I'm here. I'm
22 Jim Gennaro. I'm the Chair. I'm here.

23 MS. MCGEE: Okay. Fantastic. Thank you.

24 Earlier in today's testimony, Robert Bookman, the
25 chief lobbyist for the Hospitality Alliance, and the

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3 prime architect of the open restaurants program,
4 testified that ever since Bloomberg moved to move us
5 to an objective noise standard, we have lived happily
6 ever after, until recently with the emergence of the
7 citizen noise complaints, the rediscovery of this
8 law.

9 I am here to testify that Mr. Bookman's Happily-
10 Ever-After is my neighborhood's living hell. I live
11 in the South Village. I live in the community
12 district where we have 1000 outdoor dining sites. We
13 have so many per square mile, it is unbearable.

14 So what Mr. Bookman has wrought, Mr. Bookman is
15 seeing the return of.

16 I want to share with you the sound from MacDougal
17 street, which is around the corner. And I have
18 elderly neighbors living there in rent stabilized
19 units who have reached out to our neighborhood group
20 to ask what they can do. This is what it sounds
21 like. I'm only going to play you 30 seconds of it.

22 CHAIRPERSON GENNARO: The purpose of this hearing
23 is to get testimony not to put on a display. And so
24 I'm not inclined to grant this. I know what noise
25 sounds like. I'm sure it's going to be noisy. Next
witness please. This is not testimony.

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2 COUNSEL: Next is Mitchell Grubler.

3 SERGEANT AT ARMS: Time starts.

4 COUNSEL: Mitchell Grubler?

5 MR. GRUBLER: Yes, I'm here. I'm with the Bowery
6 Alliance of Neighbors. I'm a senior living in
7 Mitchell Lama housing. And it's not enough to
8 restrict noise when it's just in the interior. The
9 interior noise permeates to the outside. Doors open
10 and close by the waitstaff and by patrons. I live
11 across the street from a hotel with a bar on the
12 roof. I can't-- I cannot keep my windows open
13 because of the noise that comes from that bar. And
14 it's not just a matter of what sound can reach the
15 sidewalk. The sound comes up from that bar into my
16 windows. We would like to have fresh air in our
17 apartment when the weather is nice. And I am
18 deprived of that right of that fresh air as a result
19 of the noise that permeates from that bar on the
20 roof. Thank you.

21 CHAIRPERSON GENNARO: Thank you, sir.

22 COUNSEL: The next witness is Susan Ginsburg.

23 SERGEANT AT ARMS: Time starts.

24 MS. GINSBURG: Yes, hello. I live in the West
25 Village and I agree with all of the people that are

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2 very articulate about why we stand against these two

3 new laws. We have been suffering, especially living

4 near NYU's dorms, with noise. And we complain. I

5 didn't even know that there was this thing of these

6 bounties. But we call 311. We can call the

7 precinct. And the restaurants-- I have a bar on the

8 corner, that they are not supposed to open their

9 windows on my block, for the noise to come in that

10 they are playing their music inside. And, of course

11 they do. I live about three doors from them. And

12 it's excruciating. I have to go one o'clock in the

13 morning, two o'clock in the morning, go into the bar

14 and say, turn your music down, please. Do I report

15 it? Sometimes. Sometimes not. I call the owner.

16 We just-- it's just not going to change. It's

17 not going to stop until somebody says that you're

18 going to be punished for this. Or when you get your

19 liquor license, that you have to abide by a certain

20 kind of decibel level, and if you don't, we're going

21 to fine you. I mean, I just think that-- I just

22 think that that's the reasonable way to operate in

23 New York City. We live here. And somehow to the

24 restaurant industry, that doesn't seem to matter.

25 And we think that this is just an excuse for them to

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2 want with the new law that they can have outdoor
3 dining with music, which we will-- We're just going
4 to have to leave. We're-- I'm a senior. And it's--
5 it just makes you want to cry, half of our lives.
6 That's it. I don't have any of the things.

7 CHAIRPERSON GENNARO: Thank you.

8 COUNSEL: Next is Victoria Hillstom.

9 SERGEANT AT ARMS: Time starts.

10 Hello, can you hear me?

11 CHAIRPERSON GENNARO: Yes, we can do it.

12 MS. HILLSTOM: Yes. Thank you. Thank you very
13 much for having me. I would first like to say that
14 Intro at 160, and I believe it's 1194, your other
15 bills are absolutely beyond the pale. I am a
16 resident of Tribeca, 385 Greenwich, aka 71 North
17 Moore, since 1982. Many of our neighbors left during
18 the pandemic over the absolute chaos on our streets
19 from-- from the outdoor dining. The noise is
20 absolutely untenable.

21 And I would just like to say, a quite famous
22 restaurateur is above me, Carlos Omada. We've
23 designed nightclubs around the world. Our work has
24 been published. We've worked with Ian Schrager,
25 Andre Blahs. Really all the best and brightest.

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2 We've designed the most relevant nightclubs in the
3 world. And I would just like to say that these bills
4 are really just beyond the pale. New York City has
5 become a laughingstock. We don't open our doors and
6 windows and advertise. There isn't a credible
7 nightclub operator in the world-- they don't do this
8 in Paris or London. And so I would also like to
9 share in the sentiment that Mr. Bookman can certainly
10 bring suit against these two bounty hunters, which
11 really nobody has ever heard of. And I am the last
12 person in the world to be speaking out against
13 restaurateurs. I would not do it.

14 SERGEANT AT ARMS: Time expired. Thank you.

15 COUNSEL: Next is Zack Weinstein.

16 SERGEANT AT ARMS: Time starts

17 MR. WINESTINE: Sorry, I'm having trouble with my
18 computer. Yeah, Hi. My name is Zach Winestine with
19 St. Gansevoort. St. Gansevoort is an organization
20 that deals with quality of life, landmarking, and
21 land use issues in the Meat Market and far West
22 Village area.

23 As you folks know, noise is a huge problem
24 citywide. This has been mentioned in almost city--
25

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2 every citywide survey. It's mentioned in the number
3 of 311 calls.

4 What I'm puzzled by at this hearing is it appears
5 that the bad-faith actions have to citizen enforcers
6 who are intentionally incorrectly interpreting the
7 law is being used as an excuse to significantly
8 weaken the citywide noise code. The solution isn't
9 to change the code the solution is to correctly
10 enforce it the existing code. The specific concern
11 that I have is the same that that was brought up by
12 the representative of Acoustilog. They shortchanged
13 themselves. Acoustilog is one of the most highly
14 respected noise consulting businesses in the city.

15 As they said, removing the unreasonable noise
16 language from Subdivision B of Section 24-218 leaves
17 only the specified decibel levels as a constraint
18 upon noise. And the problem is that those decibel
19 levels are specified as A-weighted decibel levels,
20 dBa. DBA does not, contrary to what was said earlier
21 in this hearing, mimic human hearing. At normal
22 listening music listening volume levels dBA filters
23 out the deep bass frequencies. And as we all know,
24 it's the deep bass that creates the noise problems
25 when establishments are playing loud music. It's the

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2 deep bass that travels distances, that travels
3 through the walls, that travels through ceilings, and
4 creates the profound disturbances that community
5 residents feel.

6 It is essential that if the council wishes to
7 rely upon specific decibel levels, they've got to be
8 defined as C weighted. It's the alternate way of
9 measuring sound, of measuring decibels. It
10 incorporates the deep bass and the bass levels and
11 more authentically replicates the disturbing sounds
12 that you hear.

13 SERGEANT AT ARMS: Time expired here. Thank you.

14 CHAIRPERSON GENNARO: Thank you very much. That
15 was very compelling testimony. I appreciate that,
16 the bass stuff.

17 COUNSEL: If we have inadvertently missed anyone
18 that has registered to testify and has yet to have
19 been called, please use the Zoom hand function if you
20 are testifying remotely and you will be called in the
21 order that your hand has been raised.

22 Seeing none, we will return to the in-person
23 testimony. The next panel is Alex Stein.

24 MR. STEIN: Are the mics hot? All right.

25 Finally, it took forever for me to be able to speak.

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2 Alright guys, I am primetime Alex Stein. I have a
3 little mom-and-pop adult bookstore and we get fined
4 like crazy on gloryhole night. We play the music
5 loud. We're getting fines. They're coming there.
6 People are complaining. The bounty hunters they're
7 on us, partially because my wife's boyfriend is--
8 well, her ex-boyfriend is a bounty hunter. But
9 that's neither here nor there. Now what is my
10 biggest complaint, is on 45th Street at the Roosevelt
11 Hotel. You have every illegal Venezuelan out there
12 hooting and hollering.

13 CHAIRPERSON GENNARO: That's off topic.

14 MR. STEIN: No, no, no. I'm saying--

15 CHAIRPERSON GENNARO: That's off topic.

16 MR. STEIN: But I tried to report them, right?

17 CHAIRPERSON GENNARO: That's off topic.

18 MR. STEIN: Gennaro, no, no , no. I tried to
19 report them for their sound.

20 CHAIRPERSON GENNARO: Thank you.

21 MR. STEIN: They're out there. No, no, I'm
22 saying they're hooting and hollering. They're just
23 going, ay-yi-yi-yi-yi. And then the Haitians--

24 CHAIRPERSON GENNARO: Sergeant, turn off the
25 microphone.

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2 MR. STEIN: And I try to report the Haitians, and
3 then the Haitians-- and they're having a turf war--

4 CHAIRPERSON GENNARO: Turn off the microphone.

5 MR. STEIN: --and I'm just trying to get their
6 attention, and I'm trying to call the bounty hunter.

7 CHAIRPERSON GENNARO: Can I have the microphone
8 turned off please?

9 MR. STEIN: But you guys aren't doing anything.
10 I mean, it sounds like a little-- like a fiesta.
11 They're just out there dancing. This is what it
12 sounds like. This is what it sounds like. Their
13 Bluetooth speakers. Gennaro, and I'm just I'm just
14 sick of it. I'm trying to complain, and I'm trying
15 to live in this city.

16 CHAIRPERSON GENNARO: This is off topic.

17 MR. STEIN: I'm a pimp on a blimp and I'm trying
18 to complain, and you don't do anything.

19 CHAIRPERSON GENNARO: Turn off the microphone
20 please. This hearing is adjourned.

21 [GAVEL]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date 11/13/2023